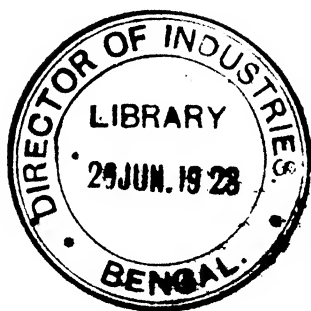


LAW AND USAGE OF PARLIAMENT.

TWELFTH EDITION.





A TREATISE

ON THE

LAW, PRIVILEGES, PROCEEDINGS AND USAGE

OF

Parliament.

541

BY

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TWELFTH EDITION.

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To  
THE RIGHT HONOURABLE  
JAMES WILLIAM LOWTHER,

SPEAKER OF THE HOUSE OF COMMONS,

&c., &c., &c.,

THE TWELFTH EDITION OF

*This Treatise,*

BY HIS KIND PERMISSION,

IS INSCRIBED, WITH THE DEEPEST GRATITUDE AND RESPECT,

by

THE EDITOR.





## PREFACE

### TO THE TWELFTH EDITION.

It may be convenient to indicate at the outset the changes in arrangement that have been made in this, the twelfth, edition of May's Parliamentary Practice. The proceedings in relation to Closure of Debate which were formerly included in Chapter VIII. have been relegated to a new chapter, in which are included also the power given to the chair of selecting amendments and a description of the orders made by the House of Commons from time to time for bringing the proceedings on stages of certain bills to a close. These orders have so increased in number and scope of recent years that some description of their objects and terms has become necessary.

The various disqualifications for membership of the House of Commons which were divided between Chapters I. and XXIII. of the last edition have been brought together in Chapter I.

The only other structural change that need be mentioned concerns Chapter XVIII., "Parliament and Charges upon the People." Parts III., "the House of Commons," and IV., "the Committees of Supply and Ways and Means," have been brought together into one part and have been placed before the part of the chapter that deals with the House of Lords and charges upon the people. In this way the functions of the constituent parts of Parliament in relation to public money have been treated in their historical sequence. Otherwise the arrangement of the book follows, like the last edition, the arrangement adopted by the late Sir Reginald Palgrave, K.C.B., and Mr. Alfred Bonham-Carter, C.B., in the tenth edition.

The adoption of the system of taking divisions in the House of Commons which was being tried experimentally when the last edition was published has necessitated considerable alteration in Chapter XIV. The extension of the practice of committing bills to a standing committee and the increase in the number of such

committees has involved some expansion of Chapter XVI., in connection with which and the following chapter on Select Committees, the editor has had the advantage of the assistance of Mr. Stephen Simeon, the principal clerk of committees, of whose help he wishes to express his most grateful acknowledgment.

The procedure under the Parliament Act, 1911, by which bills, including money bills, as defined by that Act, may under certain conditions receive the royal assent although they have not been passed by the House of Lords, is described in Chapter XV., and the circumstances that led to the passing of the Act, so far as they fall within the scope of this work, have been dealt with in connection with the House of Lords and charges upon the people in Chapter XVIII. The practice of collecting a tax as soon as the Committee of Ways and Means has agreed to the resolution authorizing its imposition or renewal was first noticed in the tenth edition. Since the publication of the last edition the Provisional Collection of Taxes Act, 1913, has been passed, under which statutory recognition is given to this practice in relation to certain taxes and for certain limited periods. A description of this Act so far as it concerns proceedings in Parliament is given in the same chapter. In his revision of these two chapters the editor is indebted to his colleagues in the Public Bill Office for valuable information and assistance.

The death of Mr. William Grey has not only thrown upon the present editor the responsibility of editing Book III., for which Mr. Grey was responsible in the eleventh edition, but has also deprived him of the ready assistance and great knowledge which Mr. Grey was always ready to place at his disposal throughout the book. Fortunately there have not been many changes in private bill practice. Those which have been made, notably the reference of private bills to the Examiners after second reading instead of after first reading, with regard to compliance with standing orders not inquired into before introduction, have been noticed in their appropriate places. In dealing with this part of the book, the editor has to thank Mr. Ernest Moon, C.B., K.C., for assistance on the various points that he referred to him and also for placing at his disposal the notes that he has made during his tenure of the office of counsel to Mr. Speaker.

With a view to greater uniformity and a saving of space, dates since 1800 have been omitted from the footnotes, unless their retention seemed specially desirable. To save any inconvenience from this course a table has been prepared by Mr. W. P. Johnston showing for each session since 1800 the relative volumes of the

Journals of both houses and of the Debates. By the use of this table the session in which any incident occurred can be determined at once, whether the incident is recorded in the Journals or Debates. A table of the abbreviations used in the footnotes has been added, in the preparation of which every effort has been made to check and co-ordinate the references.

The prefaces of the first edition and of the ninth—the latter being the last edition for which the eminent author was himself responsible—have been retained as in the last edition, and with the omission of one or two paragraphs of transient interest, Sir Reginald Palgrave's preface to the tenth edition is again reprinted, as it not only explains the general plan adopted by himself and his colleague in preparing that edition, but states the considerations and conditions by which the preparation of any new edition of the work must necessarily be governed.

In the production of this edition the editor has received from time to time valuable suggestions from Mr. Speaker, the Chairman of Ways and Means, the Deputy-Chairman, and the Clerk of the House, for which he wishes to place on record his gratitude. To many of his colleagues, in addition to those whom he has already mentioned, and especially to Mr. A. W. Nicholson, C.B., the Clerk Assistant, he owes grateful thanks for most generous help in connection with portions of the book which he has submitted to them, while he must also include in his thanks Mr. Alderson, the Clerk Assistant of the Parliaments, Mr. J. B. Hotham of the Public Bill Office, House of Lords, and Mr. Alexander Pullen, C.B., for the assistance that they gave him on matters falling within their special experience. While thanking all those who have helped him, he wishes it to be understood that he accepts the sole responsibility for the use that has been made of the information that they have been good enough to convey to him.

Finally the editor wishes to express his great indebtedness to Mr. W. P. Johnston of the Public Bill Office for the assiduous help which he has given him throughout the preparation of this edition.

T. L. W.

December 22, 1916.

PREFACE  
TO THE FIRST EDITION.

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It is the object of the following pages to describe the various functions and proceedings of Parliament, in a form adapted, as well to purposes of reference, as to a methodical treatment of the subject. The well-known work of Mr. Hatsell abounds with Parliamentary learning, and, except where changes have arisen in the practice of later years, is deservedly regarded as an authority upon all the matters of which it treats. Other works have also appeared, upon particular branches of parliamentary practice; or with an incidental rather than direct bearing upon all of them: but no general view of the proceedings of both Houses of Parliament, at the present time, has yet been published; and it is in the hope of supplying some part of this acknowledged deficiency that the present Treatise has been written.

A theme so extensive has only been confined within the limits of a single volume, by excluding, or rapidly passing over, such points of constitutional law and history as are not essential to the explanation of proceedings in Parliament; and by preferring brief statements of the general result of precedents, to a lengthened enumeration of the precedents themselves. Copious references are given, throughout the work, to the Journals of both houses, and to other original sources of information: but quotations have been restricted to resolutions and standing orders, to printed authorities, and to precedents which serve to elucidate any principle or rule of practice better than a more general statement in the text.

The arrangement of the work has been designed with a view to advance from the more general to the particular and distinct proceedings of Parliament, to avoid repetition, and to prevent any confusion of separate classes of proceedings; and each subject has been treated, by itself, so as to present, first, the rules or principles; secondly, the authorities, if any be applicable; and, thirdly, the particular precedents in illustration of the practice.

PREFACE TO THE FIRST EDITION.

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It only remains to acknowledge the kind assistance which has been rendered by many gentlemen, who have communicated their knowledge of the practice of Parliament, in their several official departments, with the utmost courtesy: while the author is under peculiar obligations to Mr. Speaker (Shaw-Lefevre), with whose encouragement the work was undertaken, and by whose valuable suggestions it has been incalculably improved.

HOUSE OF COMMONS,  
May 2, 1844.

## PREFACE

### TO THE NINTH EDITION.

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THIS work has continued to expand, in each successive edition; and the last four years have been unusually fruitful of parliamentary incidents. It will be sufficient to mention the case of Mr. Bradlaugh, the conflicts of the House of Commons with obstruction, the exceptional rules of urgency, the new standing orders for the regulation of procedure, and the appointment of standing committees for the consideration of bills relating to law and courts of justice, and to trade, shipping, and manufactures. During the same period, questions of order have also been frequent, beyond any previous experience; and many additional precedents, of earlier date, have been inserted in various parts of the work.

I gladly avail myself of this opportunity of acknowledging my obligations to many gentlemen, specially qualified to assist me,—to some of whom I am bound more particularly to allude. Mr. Speaker placed his valuable Note-books at my disposal. My colleagues, Mr. Palgrave and Mr. Milman, gave me the benefit of their judicious minutes of decisions from the Chair, and collections of precedents. Mr. Bull, the Clerk of the Journals, aided me with many skilful searches for precedents; and Mr. Bonham-Carter advised and assisted me in the review of cases of *locus standi* before the court of referees, and the practice of committees on private bills.

HOUSE OF COMMONS,  
June 6, 1883.

## PREFACE

### TO THE TENTH EDITION.

THE text of the eminent author of this treatise, and his mode of treatment, so far as practicable, are preserved throughout this edition; though condensation became necessary to obtain the admission of much new matter within the compass of a book of fairly manageable dimensions, and revision and rearrangement, to a certain extent, became expedient.

The first edition of this book was in preparation exactly fifty years ago, during those halcyon days of parliamentary existence when the standing orders of the House of Commons, now 97 in number, were only 14; when no rule or order prescribed that previous notice should be given of a motion, however important; and when a motion might be met by any form of amendment, however grotesquely irrelevant. Excluding the standing orders which require the recommendation of the Crown to motions involving a money charge, and which regulate the presentation of petitions, the parliamentary procedure of 1844 was essentially the procedure on which the House of Commons conducted business during the Long Parliament.

That is not so now. Since then Parliament has done much by way of self-reformation. The Lords no longer tolerate vote by proxy; they have substituted for the quorum of three a more suitable number; and a standing committee has been created to which every bill in its progress through the house may be referred. The Lords also have rearranged their hours of meeting to further the transaction of business. The Commons also have aggravated their labours by fixing three o'clock as the ordinary time for meeting; they have simplified their method of procedure so that the consideration of a bill, from the second reading stage until its third reading, proceeds automatically, freed, as far as possible, from opportunities for delay; and in other ways, of which a summary is

given, they have done their best to abate loquacity, and to hinder the waste of time.

To such an extent has this process been carried, that the hundreds of years which measure the existence of the House of Commons until the year 1888, did not occasion more changes in the orders and practice of the house, than have been effected during the ten years which have elapsed since the publication of the ninth edition of this book. An attempt to engraft into a treatise framed on the easy-going lines of 1844, the complex procedure of 1893, without some alteration of structure, proved, consequently, of no avail.

To the chapters, in the ninth edition, which treat of the proposal of motions, and amendments, the conduct of bills, or the rules of debate, a chapter has been added on the "method and order in the transaction of business in Parliament,"<sup>1</sup> dealing separately with certain customary occurrences in the daily routine of Parliament, which were formerly considered in connection with those matters of practice on which the procedure of the House is founded. Such, for instance, is the custom of putting questions to ministers at the outset of each day's sitting. This practice has reached such a formidable dimension, provoking an almost equally formidable crop of rulings from the Chair, that if treated, following the author's arrangement, as a matter of debate, the pages devoted to questions would largely interrupt the consideration of that subject. . . .

Another chapter is devoted to a subject which hitherto appeared in various portions of the volume, namely, the responsibilities, relations, and procedure of Parliament affecting imperial and national expenditure. A combined consideration of the monetary duties of the Crown and of the Houses of Parliament facilitated the task of the Editor, and, it is hoped, may afford corresponding aid to a possible student. Treatment, separate and yet inclusive, of this important subject is compelled by the requirements of the day, which have converted into a complex system the simple financial procedure of former times. Under these conditions the ancient freedom in the demand of "grivances" before supply is free no longer; whilst an enhanced difficulty has arisen in obtaining the supplies necessary for the service of each year. That difficulty is caused by those varied and renewed applications for money, known as supplementary grants, grants on account, excess grants, and Consolidated Fund Bills, which are an annual necessity. Thus these movements in opposite directions, though apparently

<sup>1</sup> Chapter VIII.



inconsequent, are in fact consequential; for as these demands treble the financial labour of each session, it naturally follows that, by way of compensation, restrictions should be imposed on the right of free speech as a preface to the sitting of the committee of supply. . . .

An attempt has been made to provide future Speakers with a summary of the varied duties which devolve upon them: though, as the help the Editor thus seeks to afford cannot be of use when help is most needed, he regards those pages with but slight satisfaction. A forty years' experience of parliamentary life was not needed to teach him that no epitome of the responsibilities cast upon the Chair of the House, however accurate and concise, can supply much inspiration wherewith to guide a Speaker in those critical moments thus described in language as impressive, as it is true: "The occasions are frequent, and they occur most unexpectedly, when the Speaker is called upon, unaided and alone; and at once, to decide upon difficult points which may have supreme consequences—points which require not only accurate knowledge of the forms and procedure of the house, but which demand the greatest courage and firmness to apply those precedents to the exigencies of the moment. . . ."

As this book is, when caught up from the table of the House to parry an objection, or to perplex an antagonist, expressly a book for rapid reference, it has been sought, by an ever-recurring insertion of marginal and other references, to make the book an index unto itself. . . . An inherent difficulty besets a treatise which deals not only with the historical aspect of an august, many-sided institution, but with the conditions of its daily life. The rules laid down by practice and the standing orders, and the precepts and injunctions delivered from the Chair, act with such interwoven and varied application, that their results must appear and reappear in various portions of the text, either as an enforcement, or as a modification of the principle then under consideration. Thus it is the editor's duty, by every possible means, to link together the various portions of the book, and to put each page into touch and union with its brother. . . .

*R. F. D. P.*

<sup>1</sup> Sir Matthew White Ridley, 4th August, 1892, 7 Parl. Deb. 4 s. 7.



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## TABLE OF ABBREVIATIONS.

• A. C. (preceded by date)	..	..	Law Reports, Appeal Cases, House of Lords, since 1890.
Ad. & El.	..	..	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 1831-1842.
App. Cas.	..	..	Law Reports, Appeal Cases, House of Lords, 1875-1890.
B. & Ald.	••	..	Barnewall and Alderson's Reports, King's Bench, 1817-1822.
B. & C.	..	..	Barnewall and Cresswell's Reports, King's Bench, 1822-1830.
Bac. Abr.	..	..	Bacon's Abridgment.
Bar. & Aust.	..	..	Barron and Austin's Election Cases, 1842.
Bl. Com.	..	..	Blackstone's Commentaries.
Bro. Parl. Cas.	..	..	J. Brown's Cases in Parliament, 1702-1800.
Bulst.	..	..	Bulstrode's Reports, King's Bench, folio, 3 parts in 1 volume, 1610-1626.
Burn, Eccl. Law	..	..	The Ecclesiastical Law, by Richard Burn, 9th edition, 4 volumes, 1842.
Burnet	..	..	Bishop Burnet's History of his own Time, 6 volumes, 2nd edition enlarged, 1833.
Burr.	..	..	Burrow's Reports, King's Bench, 1756-1772.
Burton	..	..	Diary of Thomas Burton, esquire, member in the parliaments of Oliver and Richard Cromwell, 4 volumes, 1828.
C.	..	..	Paper presented to Parliament by Royal Command, 1870-1900.
Cd.	..	..	Paper presented to Parliament by Royal Command, 1900-(current).
C. B.	..	..	Common Bench Reports, 1845-1856.
C. J.	..	..	Journals of the House of Commons.
Campbell, Ch. Just.	..	..	Lives of the Chief Justices of England, by John, Lord Campbell, 3 volumes, 1849-1857.
Campbell, Lives	..	..	Lives of the Lord Chancellors and Keepers of the Great Seal of England, by John, Lord Campbell, 8 volumes, 1845-1869.
Car. & Kir	••	..	Carrington and Kirwan's Reports, Nisi Prius, 1848-1853.

Car. & M.	.. ..	Carrington and Marshman's Reports, Nisi Prius, 1841-1848.
Carte	.. ..	A General History of England, by Thomas Carte, 4 volumes, 1750.
Carth.	.. ..	Carthew's Reports, King's Bench, folio, 1 volume, 1687-1700.
Cav. Deb.	.. ..	Sir Henry Cavendish's Debates of the House of Commons, 1768-1774, in 2 volumes, 1841-1842.
Ch. (preceded by date)		Law Reports, Chancery Division, since 1890.
Ch. App.	.. ..	Law Reports, Chancery Appeals, 1865-1875.
Ch. D.	.. ..	Law Reports, Chancery Division, 1875-1890.
Chandler, Deb.	.. ..	Debates of the House of Commons, by Richard Chandler, 14 volumes, 1660-1748.
Chit.	.. ..	Chitty's Practice Reports, King's Bench, 1770-1822.
Cl. & Fin.	.. ..	Clark and Finelly's Reports, House of Lords, 1831-1846.
Clarendon	.. ..	A History of the Rebellion and Civil Wars in England, by Edward, Earl of Clarendon, Oxford, 1849.
Clif. & Rick.	.. ..	Clifford and Rickards' <i>Locus Standi</i> Reports, 1873-1884.
Clif. & Steph.	.. ..	Clifford and Stephens' <i>Locus Standi</i> Reports, 1867-1872.
Clifford	.. ..	History of Private Bill Legislation, by Frederick Clifford, 2 volumes, 1887.
Co. Inst.	.. ..	Institutes of the Laws of England, by Sir Edward Coke.
Colchester	.. ..	Diary and Correspondence of Charles Abbot, Lord Colchester, 3 volumes, 1861.
Com. Dig.	.. ..	Comyns' Digest.
Constable	.. ..	Treatise on Provisional Orders applicable to Scotland under the Private Legislation Procedure (Scotland) Act, by Constable, Beveridge and Macmillan, 1900.
Co. Rep.	.. ..	Reports of Sir Edward Coke, 18 parts, 1572-1616.
Cotton	.. ..	An exact abridgment of the Records in the Tower of London, by Sir Robert Cotton, 1689.
Cowp.	.. ..	Cowper's Reports, King's Bench, 1774-1778.
Dasent, Speakers	.. ..	Speakers of the House of Commons, by Arthur Irwin Dasent, 1911.
Denison	.. ..	Notes from my Journal when Speaker of the House of Commons, by the late John Evelyn Denison, 1900.
D'Ewes	.. ..	Journals of all the Parliaments during the reign of Queen Elizabeth, by Sir Simonds d'Ewes, 1682.
Doug. El. Cas.	.. ..	Douglas' Election Cases, 1774-1776.
Doug. (K. B.)	.. ..	Douglas' Reports, King's Bench, 1778-1785.
Dow. & Ry. (K. B.)	.. ..	Dowling and Ryland's Reports, King's Bench, 1822-1827.
East	.. ..	East's Reports, King's Bench, 1800-1812.
Eldon	.. ..	Life of Lord Chancellor Eldon, by Horace Twiss, 3 volumes, 1844.

# ABBREVIATIONS.

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Elsynge .. ..	The Manner of Holding Parliaments in England, by Henry Elsynge, Cler. Parl., 1768.
Esp. .. ..	Espinasse's Reports, Nisi Prius, 1798-1810.
Exch. .. ..	Exchequer Reports (Welsby, Hurlstone, and Gordon), 1847-1856.
Fost. .. ..	Foster's Crown Cases, 1748-1760.
Fox, Memorials ..	Memorials and Correspondence of Charles James Fox, edited by Lord John Russell, 4 volumes, 1853.
G. O. .. ..	General Orders under the Private Legislation Procedure (Scotland) Act, 1899.
Gilb. C. P. .. ..	Gilbert's History and Practice of the Court of Common Pleas.
Grey, Deb. .. ..	Debates of the House of Commons from 1667 to 1694, collected by the Honourable Anchtell Grey, 10 volumes, 1769.
H. C. .. ..	House of Commons.
H. C. Deb. 5 s. ..	Parliamentary Debates (Official Report), 5th series, House of Commons, 1909-(current).
H. D. 1 s. .. ..	Hansard's Debates, 1st series, 1803-1820.
H. D. 2 s. .. ..	Hansard's Debates, 2nd series, 1820-1830.
H. D. 3 s. .. ..	Hansard's Debates, 3rd series, 1830-1891.
H. L. .. ..	House of Lords.
H. L. Cas. .. ..	Clark's Reports, House of Lords, 1847-1866.
H. L. Deb. 5 s. ..	Parliamentary Debates (Official Report), 5th series, House of Lords, 1909-(current).
Hakewel .. ..	Modus tenendi parliamentum or the old manner of holding parliaments in England, by W. Hakewel, 1660.
Hale, C. L. .. ..	History of the Common Law of England, by Sir Matthew Hale, 6th edition, 1820.
Hale, Jurisd. Lords ..	Jurisdiction of the Lords' House of Parliament considered according to antient records, by Lord Chief Justice Hale, 1796.
Hallam, Const. Hist. ..	Constitutional History of England from the accession of Henry VII to the death of George II., by Henry Hallam, 7th edition, 8 volumes, 1854.
Hallam, Mid. Ages ..	View of the state of Europe during the Middle Ages, by Henry Hallam, 11th edition, 1866.
Hatsell .. ..	Precedents of Proceedings in the House of Commons, 1818.
Hawk. P. C. .. ..	Hawkins's Pleas of the Crown, 2 volumes.
J. P. .. ..	Justice of the Peace, 1837-(current).
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900.
Keb. .. ..	Keble's Reports, folio, 1661-1677.
Kemble, Saxons ..	The Saxons in England, by John Mitchell Kemble, 2 volumes, 1849.
Keny. .. ..	Kenyon's Notes of Cases, King's Bench, 1753-1759.
L. J. .. ..	Journals of the House of Lords.
L. J. (CH.) .. ..	Law Journal, Chancery, 1822-(current).

L. J. (EX.)	.. ..	Law Journal, Exchequer, 1880-1875.
L. R. C. P.	.. ..	Law Reports, Common Pleas, 1865-1875.
L. R. Ir.	.. ..	Law Reports (Ireland), Chancery and Common Law, 1877-1898.
L. R. Q. B.	.. ..	Law Reports, Queen's Bench, 1865-1875.
L. T.	.. ..	Law Times Reports, 1859-(current).
Ld. Raym.	.. ..	Lord Raymond's Reports, King's Bench and Common Pleas, 1694-1732.
Lev.	.. ..	Levinz's Reports, King's Bench and Common Pleas, 1660-1696.
Lex Parl.	.. ..	Lex Parliamentaria or a Treatise of the Law and Custom of Parliaments, 2nd edition [by George Petyt].
M. & S.	.. ..	Maule and Selwyn's Reports, King's Bench, 1813-1817.
Macaulay, Hist.	.. ..	History of England from the accession of James II., by Thomas Babington Macaulay, 5 volumes, 1849-1861.
Macqueen	.. ..	Appellate Jurisdiction of the House of Lords and Privy Council, by John Macqueen, 1842.
Maitland, Const. Hist.	.. ..	Constitutional History of England, by F. W. Maitland, LL.D., 1908.
Marvell	.. ..	Works of Andrew Marvell, esquire, 3 volumes, 1776.
May, Const. Hist.	.. ..	Constitutional History of England since the accession of George the Third, by Sir Thomas Erskine May, K.C.B., D.C.L., edited and continued to 1911 by Francis Holland, 3 volumes, 1912.
Mod. Rep.	.. ..	Modern Reports, 1669-1755.
Morr.	.. ..	Morrell's Reports, Bankruptcy, 1884-1893.
Off. J.	.. ..	Journal of Proceedings upon Applications for Provisional Orders under the Private Legislation Procedure (Scotland) Act, 1899.
O'M. & H.	.. ..	O'Malley and Hardesty's Election Cases, 1869-(current).
Oxford Deb.	.. ..	Proceedings and Debates of the House of Commons in 1620 and 1621, collected by a member of that House, 2 volumes, Oxford, 1766.
P. D.	.. ..	Law Reports, Probate, Divorce, and Admiralty Division, 1875-1890.
P. L. R.	.. ..	Private Legislation (Scotland) Reports, by Constable, Macmillan and Beveridge.
P. Wms.	.. ..	Peere Williams' Reports, Chancery and King's Bench, 1695-1785.
Palgrave, Engl. Com.	.. ..	Rise and Progress of the English Commonwealth, by Francis Palgrave, 1832.
Parl. Deb. 4 s.	.. ..	Parliamentary Debates (authorized edition), Fourth Series, 1892-1908.
Parl. Hist.	.. ..	Parliamentary History of England from the earliest period to the year 1803.



# ABBREVIATIONS.

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Parl. Pap. (H. C.)	..	Paper printed by order of the House of Commons in session named.
Parl. Pap. (H. L.)	..	Paper printed by order of the House of Lords in session named.
Peck.	..	Peckwell's Election Cases, 1803-1804.
Perceval	..	Life of the Right Hon. Spencer Perceval, by Spencer Walpole, 2 volumes, 1874.
Plumer Ward	..	Memoirs of the Political and Literary Life of Robert Plumer Ward, by the Honourable Edmund Phipps, 2 volumes, 1950.
Prynne, Register	..	Brief Register, Kalendar, and Survey of the Several Kinds, Forms of all Parliamentary Writs, by William Prynne, 1659-1664.
Q. B. (preceded by date)		Law Reports, Queen's Bench Division, 1891-1901.
Q. B. D.	..	Law Reports, Queen's Bench Division, 1875-1890.
Rapin	..	History of England, by Rapin de Thoyres, translated by N. Tindal, 2 volumes, 1733.
Rep. Dignity of Peer	..	Reports of Lords' Committee on the Dignity of a Peer of the Realm, Parl. Pap. (H. C.), sess. 1826, 1st Report, No. 391; Appendix No. 1, Part I. No. 392; Part II. No. 393; 2nd, 3rd, and 4th Reports, No. 394.
Rick. & M.	..	Rickards and Michael's Locus Standi Reports, 1885-1889.
Rick. & S.	..	Rickards and Saunders' Locus Standi Reports, 1890-1894.
Rogers on Elections	..	Rogers on Elections, volume 1, Registration, 17th edition, 1909; volume 2, Parliamentary Elections and Petitions, 18th edition, 1906.
Rot. Parl.	..	Rotuli Parliamentorum, etc., 6 Edward I. to 19 Henry VII.
Ry. & Can. Cas.	..	Railway and Canal Cases, 1835-1854.
Rym. Foed.	..	Foedera, Thomas Rymer and Robert Sanderson, edition 1745, 10 volumes.
S. O.	..	Standing Order.
Salk.	..	Salkeld's Reports, King's Bench, 1689-1712.
Saund.	..	Saunders's Reports, King's Bench, 1666-1672.
Saund. & A.	..	Saunders and Austin's Locus Standi Reports, 1895-1904.
Saund. & B.	..	Saunders and Bidder's Locus Standi Reports, 1905-(current).
Scobel	..	Memorials of the Manner of passing bills, by Henry Scobel, esquire, Cler. Parl. (in Miscellanea Parliamentaria, 1685).
Show.	..	Shower's Reports, King's Bench, 1678-1695.
Sidmouth	..	Life and Correspondence of the Rt. Hon. Henry Addington, 1st Viscount Sidmouth, by the Honourable George Pellew, D.D., 3 volumes, 1847.

## ABBREVIATIONS.

Smethurst .. ..	Treatise on Locus Standi, 2nd edition, 1867.
Smith, L. C. .. ..	Smith's Leading Cases.
Stark. .. ..	Starkie's Reports, Nisi Prius, 1814-1828.
State Papers .. ..	State Papers published under the authority of His Majesty's Commission, King Henry VIII., 11 volumes, 1831-1852.
State Tr. .. ..	State Trials, 1168-1820.
Stat. of the Realm .. ..	Statutes of the Realm (Record Commission), 1810 <i>et seq.</i>
Story .. ..	Commentaries on the Constitution of the United States, by Joseph Story, LL.D., 3rd edition, 2 volumes, 1858.
Stra. .. ..	Strange's Reports, 1716-1747.
Stubbs, Const. Hist. .. ..	Constitutional History of England, by William Stubbs, 2nd edition, 1875.
Stubbs, Sel. Ch. .. ..	Select Charters and other Illustrations of English Constitutional History, by William Stubbs, 1870.
Sty. .. ..	Style's Reports, King's Bench, folio, 1646-1655.
Sugden .. ..	A treatise of the Law of Property as administered by the House of Lords, by Sir Edward Sugden, 1849.
Suppl. to Votes .. ..	Supplement to the Votes and Proceedings of the House of Commons.
T. L. R. .. ..	The Times Law Reports, 1884-(current).
Taunt. .. ..	Taunton's Reports, Commons Pleas, 1807-1819.
Term Rep. .. ..	Term Reports (Durnford and East), folio, 1785-1800.
Timberland .. ..	History and Proceedings of the House of Lords from the Restoration in 1660 to 1742 [printed for E. Timberland].
Tit. of Hon. .. ..	Titles of Honor, by John Selden, 3rd edition, 1672.
Todd .. ..	Parliamentary Government in England, by Alpheus Todd, LL.D., C.M.G. New edition by Spencer Walpole, 1892.
Vent. .. ..	Ventris' Reports, folio, 1668-1691.
W. R. .. ..	Weekly Reporter, 1852-1906.
West, Inq. .. ..	An Inquiry into the Manner of creating Peers (by Richard West), 1719.
Wils. .. ..	G. Wilson's Reports, King's Bench and Common Pleas, folio, 1742-1774.

# A COMPARATIVE TABLE

SHOWING THE VOLUMES OF THE JOURNALS OF BOTH HOUSES AND OF THE  
PARLIAMENTARY DEBATES FOR EACH SESSION SINCE 1801.

*An asterisk denotes the first session of a Parliament.*

Session.	Lords' Journals.	Commons' Journals.	Parliamentary History.	Session.	Lords' Journals.	Commons' Journals.	Hansard's Debates, 2nd Series.
*1801	48	56	35	1825	57	80	12—13
1801—2	48	57	36	1826	58	81	14—15
*1802—3	44	58	36	*1826—7	59	82	16—17
1803—4	44	59	Hansard's Debates, 1st Series. 1—2	1828	60	83	18—19
1805	45	60	3—5	1829	61	84	20—21
1806	45	61	6—7	1830	62	85	22—25
*1806—7	46	62	8—9	*1830—1	63	86 Pt. I.	Hansard's Debates, 3rd Series. 1—3
*1807	46	62	9	*1831	63	86 Pt. II.	4—8
1808	46	63	9—11	1831—2	64	87	9—14
1809	47	64	12—14	*1833	65	88	15—20
1810	47	65	15—17	1834	66	89	21—25
1810—11	48	66	18—20	*1835	67	90	26—30
1812	48	67	21—23	1836	68	91	31—35
*1812—13	49	68	24—26	1837	69	92	36—38
1813—14	49	69	27—28	*1837—8	70	93	39—44
1814—15	50	70	29—31	1839	71	94	45—50
1816	50	71	32—34	1840	72	95	51—55
1817	51	72	35—36	1841 (I.)	73	96	56—58
1818	51	73	37—38	*1841 (II.)	73	96	59
*1819	52	74	39—40	1842	74	97	60—65
1819—20	52—53	75	41	1843	75	98	66—71
*1820	53	75	Hansard's Debates, 2nd Series. 1—3	1844	76	99	72—76
1821	54	76	4—5	1845	77	100	77—82
1822	55	77	6—7	1846	78	101	83—88
1823	55	78	8—9	1847	79	102	89—94
1824	56	79	10—11	*1847—8	80	103	95—101
				1849	81	104	102—107

COMPARATIVE TABLE—*continued.*

Session.	Lords' Journals.	Commons' Journals.	Hansard's Debates, 3rd Series.	Session.	Lords' Journals.	Commons' Journals.	Hansard's Debates, 3rd Series.
1850	82	105	108—118	1877	109	132	232—236
1851	83	106	114—118	1878	110	133	237—242
1852	84	107	119—122	1878—4	111	134	243—249
*1852—3	85	108	123—129	1880 (I.)	112	135	250—254
1854	86	109	130—135	*1880 (II.)	112	135	252—256
1854—5	87	110	136—139	1881	113	136	257—265
1856	88	111	140—143	1882	114	137	266—275
1857 (I.)	89	112	144	1883	115	138	276—283
*1857 (II.)	89	112	145—147	1884	116	139	284—292
1857—8	90	113	148—151	1884—5	117	140	293—301
1859 (I.)	91	114	152—153	*1886 (I.)	118	141	302—307
*1859 (II.)	91	114	154—155	*1886 (II.)	118	141	308—309
1860	92	115	156—160	1887	119	142	310—321
1861	93	116	161—164	1888	120	143	322—332
1862	94	117	165—168	1889	121	144	333—340
1863	95	118	169—172	1890	122	145	341—348
1864	96	119	173—176	1890—1	123	146	349—356
1865	97	120	177—180				Parliamentary Debates, 4th Series.
*1866	98	121	181—184	1892 (I.)	124	147	1—6
1867	99	122	185—189	*1892 (II.)	124	147	7
1867—8	100	123	190—193	1893—4	125	148	8—21
*1868—9	101	124	194—198	1894	126	149	22—29
1870	102	125	199—203	1895 (I.)	127	150	30—35
1871	103	126	204—208	*1895 (II.)	127	150	36
1872	104	127	209—213	1896	128	151	37—44
1873	105	128	214—217	1897	129	152	45—52
*1874	106	129	218—221	1898	130	153	53—65
1875	107	130	222—226	1899 (I.)	131	154	66—76
1876	108	131	227—231	1899 (II.)	131	154	77

## COMPARATIVE TABLE—continued.

Session.	Lords' Journals.	Commons' Journals.	Hansard's Debates, 4th Series.	Session.	Lords' Journals.	Commons' Journals.	Parliamentary Debates (Official Report) 5th Series.	
							Lords.	Commons.
1900 (I.)	132	155	78—87					
*1900 (II.)	132	155	88	1909	141	164	1—4	1—13
1901	133	156	89—100	*1910	142	165	5—6	14—20
1902	134	157	101—117	*1911	143	166	7—10	21—33
1903	135	158	118—128	1912—3	144	167	11—13	34—49
1904	136	159	129—140	1913	145	168	14	50—57
1905	137	160	141—151	1914	146	169	15—17	58—67
*1906	138	161	152—168	1914—6	147	170	18—20	68—79
1907	139	162	169—182	1916	148	171	21—23	80—89
1908	140	163	183—199					



## BOOK I.

### CONSTITUTION, POWERS AND PRIVILEGES OF PARLIAMENT.

#### CHAPTER I.

##### THE CONSTITUENT PARTS OF PARLIAMENT.

THE present constitution of Parliament has been the growth of many centuries. Its origin and early history, though obscured by the remoteness of the times and the imperfect records of a dark period in the annals of Europe, have been traced back to the free councils of our Saxon ancestors. The popular character of these institutions was subverted, for a time, by the Norman Conquest: but the people of England were still Saxons by birth, in language and in spirit, and gradually recovered their ancient share in the councils of the State. Step by step the Legislature has assumed its present form and character; and after many changes, its constitution is now defined by—

*Introductory remarks.*

“The clear and written law,—the deep-trod footmarks  
Of ancient custom.”

No historical inquiry has greater attractions than that which follows the progress of the British Constitution from the earliest times, and notes its successive changes and development: but the immediate object of this work is to display Parliament in its present form, and to describe its various operations under existing laws and customs. For this purpose the history of the past will be adverted to: but more for the explanation of modern usage than on account of the interest of the inquiry itself. Apart from the immediate functions of Parliament, the general constitution of the British Government is not within the design of this treatise; and however great the temptation may be to digress upon topics which are suggested by the proceedings of Parliament, such digressions are rarely admitted.

Within these bounds an outline of each of the constituent parts of Parliament, with incidental reference to their ancient history and constitution, will properly introduce the consideration of the various attributes and proceedings of the Legislature.

Constitu-  
ent parts  
of Parlia-  
ment.

The Parliament of the United Kingdom of Great Britain and Ireland is composed of the King or Queen and the three estates of the realm, viz. the Lords Spiritual, the Lords Temporal and the Commons. These several powers collectively make laws that are binding upon the subjects of the British empire; and, as distinct members of the supreme legislature, enjoy privileges and exercise functions peculiar to each.<sup>1</sup>

I The  
King or  
Queen.

I. The Crown of these realms is hereditary, being subject, however, to special limitations by Parliament; and the king or queen<sup>2</sup> has ever enjoyed, by prescription, custom and law, the chief place in Parliament and the sole executive power. The right of succession and the prerogatives of the Crown itself are, however, subject to limitations and change by legislative process with the consent and authority of the sovereign.<sup>3</sup> To the changes that have been effected, at different times, in the legal succession to the Crown, it is needless to refer, as the Revolution of 1688 is a sufficient example. The power of Parliament over the Crown is distinctly affirmed by the statute law, and recognized as an important principle of the constitution.

Limita-  
tions of  
preroga-  
tive.

All the kings and queens since the Revolution have taken an oath at their coronation, by which they have "promised and sworn to govern the people of this kingdom, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same."<sup>4</sup>

The Act of Settlement (12 & 13 Will. III. c. 2) affirms "that the laws of England are the birthright of the people thereof; and all the kings and queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws; and all their officers and ministers ought to

<sup>1</sup> For the conditions laid down by the Parliament Act, 1911, under which bills which have been passed by the House of Commons but have been rejected by the House of Lords may receive the Royal assent and acquire the force of law, see p. 396.

<sup>2</sup> For statutory confirmation of the ancient right of females to inherit the Crown, see 1 Mar. Sess. 2, c. 1; and

1 Mar. Sess. 3, c. 1; 1 Eliz. c. 3. For the form in which the accession of a sovereign is recognized, see 92 C. J. 488; 156 ib. 2; 165 ib. 148.

<sup>3</sup> For recent additions made by statute to the royal style and title, see the Royal Titles Acts, 1876 and 1901.

<sup>4</sup> 1 Will. & Mary, c. 6. Form and Order of H.M. Coronation.



serve them respectively according to the same." The Succession to the Crown Act, 1707 (6 Anne, c. 41), declares it high treason for any one to maintain and affirm, by writing, printing, or preaching, "that the kings or queens of this realm, by and with the authority of Parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the Crown, and the descent, limitation, inheritance, and government thereof." Nor was this a modern principle of constitutional law established, for the first time, by the Revolution of 1688. If not admitted in its whole force so far back as the great charter of King John, it has been affirmed by Parliament in very ancient times. In the 40th Edward III. (1366) the pope demanded homage of that monarch for the kingdom of England and land of Ireland, and the arrears of 1,000 marks a year that had been granted by King John to Innocent III. and his successors. The king laid these demands before his Parliament, and it is recorded that "the prelates, dukes, counts, barons, and commons, thereupon, after full deliberation, answered and said, with one accord, that neither the said King John, nor any other, could put himself, or his kingdom or people, in such subjection without their assent; and as it appears, by several evidences, that if this was done at all, it was done without their assent, and against his own oath on his coronation," they resolved to resist the demands of the pope with all their power.<sup>1</sup> From the words of this record it would appear that, whether the charter of King John submitted the royal prerogatives to Parliament or not, it was the opinion of the Parliament of Edward III. that even King John had been bound by the same laws which subsisted in their own time.<sup>2</sup>

The same principle had been laid down by the most venerable authorities of the English law, before the limits of the constitution had become defined. Bracton, a judge in the reign of Henry III., declared that "the king must not be subject to any man, but to God and the law, because the law makes him king."<sup>3</sup> At a later period, the learned Fortescue, the Lord Chancellor of Henry VI., thus explained the royal prerogative to the king's son, whose banishment he shared: "A king of England cannot, at his pleasure . . . make any alteration or change in the laws of the realm without the consent of the subject, nor burthen them, against their wills, with strange

<sup>1</sup> 2 Rot. Parl. 299.

<sup>2</sup> See also Coronation oath of Edw. II. in 1307, Rym. Feod. vol. 1, pt. iv. 112;

Book of Oaths, 1689, p. 195.

<sup>3</sup> Bracton, lib. 1, c. 8.

impositions.”<sup>1</sup> Later still, during the reign of Elizabeth, who did not suffer the royal prerogative to be impaired in her time, Sir Thomas Smyth affirmed that “the most high and absolute power of the realm of England consisteth in the Parliament;”<sup>2</sup> and then proceeded to assign to the Crown exactly the same place in Parliament as that acknowledged by statute, since the Revolution.

Not to multiply authorities, enough has been said to prove that the Revolution defined, rather than limited, the constitutional prerogatives of the king, and that the Bill of Rights<sup>3</sup> was but a declaration of the ancient law of England.<sup>4</sup>

Profession  
of the  
Protestant  
faith.

An important principle of constitutional law was introduced at the Revolution, by which the sovereign is bound to an adherence to the Protestant faith, and to the maintenance of the Protestant religion, as established by law. He is required to swear, at his coronation, to maintain “the true profession of the Gospel, and the Protestant reformed religion established by law.” By the Bill of Rights<sup>5</sup> and the Act of Settlement,<sup>6</sup> any person professing the popish religion, or who shall marry a papist, is incapable of inheriting or possessing the Crown, and the people are absolved from their allegiance. This exclusion is further confirmed by the second article of the Act of Union with Scotland (6 Anne, c. 11). In addition to the coronation oath, every king or queen is required to make a declaration, either on the throne in the House of Lords, in the presence of both houses, at the first meeting of the first Parliament after the accession, or at the coronation, whichever shall first happen,<sup>7</sup> to the effect that he is a faithful protestant and that he will maintain the enactments which secure the Protestant succession to the throne to the best of his powers.<sup>8</sup> By similar sanctions the sovereign is also

<sup>1</sup> De Laudibus Leg. Ang. c. 9.

<sup>2</sup> De Republica Anglorum, book 2, c. 1, by Sir Thomas Smyth, kut.

<sup>3</sup> “That the pretended power of suspending or dispensing with laws, or the execution of laws, without consent of Parliament, is illegal.” . . . “That levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament for longer time or in other manner than the same is or shall be granted, is illegal.”—1st, 2nd, and 4th Articles of the Bill of Rights.

<sup>4</sup> See Allen, Rise and Growth of Royal

Prerogative in England; Stubbs, Const. Hist. i. 135; ii. 317, 352, 507.

<sup>5</sup> 1 Will. & Mary, sess. 1, c. 6; sess. 2, c. 2, s. 9.

<sup>6</sup> 12 & 13 Will. III. c. 2, s. 2.

<sup>7</sup> 1 Will. & Mary, sess. 2, c. 2, s. 1; 12 & 13 Will. III. c. 2, s. 2; 143 L. J. 10.

<sup>8</sup> The form of this declaration is prescribed by the Accession Declaration Act, 1910 (10 Edw. VII. and 1 Geo. V., c. 29), in substitution for the declaration against the doctrines of the Roman Catholic Church prescribed by 30 Charles II. st. 2.

bound to maintain the Protestant religion and Presbyterian church government in Scotland.<sup>1</sup>

The prerogatives of the Crown, in connexion with the legislature, are of paramount importance. The legal existence of Parliament results from the exercise of royal prerogative. As "supreme governor, as well in all spiritual or ecclesiastical things or causes as temporal,"<sup>2</sup> the King virtually appoints the archbishops and bishops, who, as "lords spiritual," form one of the three estates of the realm.<sup>3</sup> All titles of honour are the gift of the Crown, and thus the "lords temporal" also, who form the remainder of the upper house, have been created by royal prerogative, and their number may be increased at pleasure. In early times the summons of peers to attend Parliament depended entirely on the royal will: but their hereditary titles have long since been held to confer a right to sit in Parliament. To a king's writ, also, the House of Commons owe their election as the representatives of the people. To these fundamental powers are added others, of scarcely less importance, which will be noticed in their proper place.

Prerogative in connexion with Parliament.

The Crown has also an important privilege in regard to the deliberations of both houses. The Speaker of the Lords is the lord high chancellor or lord keeper of the great seal,—an officer more closely connected with the Crown than any other in the state; and even the Speaker of the Commons, though elected by them, is submitted to the approbation of the Crown (see p. 146).

In connexion with the Speaker-ship.

II. The Lords Spiritual and Temporal sit together, and jointly constitute the House of Lords, which is the second branch of the legislature in rank and dignity. The lords spiritual are the archbishops and bishops of the Church of England having seats in Parliament by ancient usage and by statute. Before the Conquest, the lords spiritual held a prominent place in the great Saxon councils, which they retained in the councils of the Norman kings: but the right, or tenure, by which they have held a place in Parliament since the Conquest, has not been agreed upon by constitutional

II. The House of Lords. Lords spiritual.

<sup>1</sup> Act of Union, 6 Ann. c. 11, s. 2; Act of the Parliament of Scotland, 1707, c. 6. See oath taken by His Majesty at the Accession Council, 7th May, 1910, *London Gazette*, p. 3246.

<sup>2</sup> Act 1 Eliz. c. 1, s. 19; Gibson, *Codex*, i. 45. Concerning the use of the title "Supreme head of the Church," see 4 Co. Inst. 344; Hooker, *Ecl. Pol. book viii. c.*

4; Zurich Letters (Parker Society), i. 29. 33; and the preamble of 2 & 3 Ann. c. 20.

<sup>3</sup> The order of precedence of the lords spiritual is as follows: princes of the blood, Archbishop of Canterbury, lord chancellor, Archbishop of York, prime minister, lord president, lord privy seal, dukes, marquesses, earls, viscounts, bishops, barons.

writers. In the Saxon times, there is no doubt that they sat, as bishops, by virtue of their ecclesiastical office: but, according to Selden and to Blackstone, William the Conqueror, in the fourth year of his reign, first brought the bishops and abbots under the tenure by barony.<sup>1</sup> Lord Hale was of opinion that the bishops sit by usage; and Hallam maintains that the bishops of William the Conqueror were entitled to sit in his councils by the general custom of Europe, which invited the superior ecclesiastics to such offices, and by the common law of England, which the Conquest did not overturn.<sup>2</sup> Their presence in Parliament, except during the Commonwealth,<sup>3</sup> has been uninterrupted and their right to sit there unquestioned, whatever nominal changes may have been effected in the nature of their tenure. In 1847, however, on the creation of the bishopric of Manchester, it was enacted that the number of bishops sitting in Parliament should not be increased in consequence, and a similar provision has been made in the case of bishoprics which have been created subsequently.<sup>4</sup>

The bishops now having seats in Parliament are the two archbishops (of Canterbury and York) and twenty-four of the English bishops.<sup>5</sup> Whenever any one of the sees of Canterbury, York, London, Durham, or Winchester becomes void, the vacancy in the House of Lords is supplied by the issue of a writ of summons to the bishop elected to the see; and a similar writ is issued to any bishop already sitting in the House of Lords who is translated to another

<sup>1</sup> Tit. of Hon. part 2, s. 19; 1 Bl. Com. 156.

<sup>2</sup> Hallam, *Mid. Ages*, iii. 5; see also Stubbs, *Const. Hist.* i. 230; ii. 169, 194; Elysinge, 3 "*ratione episcopalis dignitatis et tenuræ*;" Hody, *Treatise on Convocations*, 126; see also Burn, *Ecclesiastical Law*, i. 216, *et seq.*

<sup>3</sup> They were excluded by Act 16 Car. I. c. 27, and did not resume their seats, after the Restoration, in the Convention Parliament, but were restored in the next Parliament, by statute 13 Car. II. c. 2. The four bishops added to the House of Lords, at the Union, to represent the episcopal body of Ireland, were withdrawn after the 1st January, 1871, on the disestablishment of the Irish Church (32 & 33 Vict. c. 42). The Welsh Church Act, 1914, provides that on and after the date of disestablishment of the Church in Wales, no bishop of the Church in Wales

shall as such be summoned to the House of Lords or be qualified to sit or vote as a Lord of Parliament, 4 & 5 Geo. V. c. 91, s. 2 (2). Vacancies so caused are to be supplied by the issue of writs of summons to bishops not disqualified by the Act who have not previously received writs of summons (see p. 7). 1b. s. 2 (3).

<sup>4</sup> 10 & 11 Vict. c. 108, s. 2; St. Alban's, 1875 (38 & 39 Vict. c. 34; Truro, 1876 (39 & 40 Vict. c. 54); Liverpool, Newcastle, Southwell, and Wakefield, 1878 (41 & 42 Vict. c. 68, s. 5); Bristol, 1884 (47 & 48 Vict. c. 66); Southwark and Birmingham, 1904 (4 Edw. VII. c. 30); Chelmsford, St. Edmundsbury and Ipswich, and Sheffield, 1913 (3 & 4 Geo. V. c. 36).

<sup>5</sup> The Bishop of Sodor and Man has no seat in Parliament. The former bishop, Lord Auckland, sat as a peer amongst the barons.

see. If a vacancy among the bishops sitting in Parliament is caused by the avoidance of any other see than the five already mentioned, such vacancy is supplied "by the issue of a writ of summons to that bishop of a see in England who, having been longest bishop of a see in England, has not previously become entitled to such writ."<sup>1</sup> A bishop may, under the Bishops' Resignation Act, 1869, resign his see, and therewith his seat in the House of Lords, when the vacancy is filled up in the same manner as if he were dead.<sup>2</sup> Provision is also made by this statute for the appointment of a coadjutor bishop to administer the diocese of any archbishop or bishop incapacitated by permanent mental infirmity.<sup>3</sup> This appointment gives the coadjutor bishop no title to a seat in the upper house, but it confers on him a right of succession to the see, unless it be one of the five sees above named, in which case the right is reserved to the Crown, on the death of the archbishop or bishop who has been incapacitated, to fill the vacancy by the translation of another bishop; but such translation or translations must be so effected as to leave vacant an archbishopric or bishopric to which the coadjutor bishop is then entitled to succeed.<sup>4</sup>

The lords temporal are divided into dukes, marquesses, earls, viscounts and barons, whose titles are of different degrees of antiquity and honour. The title of duke, though first in rank, and a feudal title of high dignity in all parts of Europe in early times, is not the most ancient in this country. The title was first conferred, after the Conquest, by Edward III., upon his son Edward the Black Prince, whom he created Duke of Cornwall.<sup>5</sup>

Marquesses were originally lords of the marches or borders, and derived their title from that office, which was anciently enjoyed without being attached to any distinct dignity in the peerage. The noblemen who governed the provinces on the borders of Wales and Scotland were called *marchiones*, and claimed certain privileges by virtue of their office: but the earliest creation of marquess, as a title of honour, was in the ninth year of Richard II. Robert de Vere, Earl of Oxford, was then created Marquess of Dublin for life; and the rank assigned to him in Parliament, by right of this new dignity, was immediately after the dukes, and before the earls.<sup>6</sup>

<sup>1</sup> 41 & 42 Vict. c. 68, s. 57.

<sup>2</sup> 32 & 33 Vict. c. 111, s. 2. Bishop of Gloucester. 1905, Archbishop of York, 1909, Bishop of Winchester and Ripon, 1911, Bristol, 1914, Newcastle, 1915, Peterborough and Exeter, 1916.

<sup>3</sup> 32 & 33 Vict. c. 111 ss. 4, 12.

<sup>4</sup> 32 & 33 Vict. c. 111, s. 13.

<sup>5</sup> Tit. of Hon. part 2, Ch. V., s. 9, 29, &c.

<sup>6</sup> Tit. of Hon. part 2, Ch. V., s. 30; 3 Rot. Parl. 488.

Earls.

The title of Earl, in England, is equivalent to that of the Roman *comes* or count in other countries of Europe. Amongst the Saxons there were *ealdormen*, to whom the civil, military and judicial administration of shires was committed; and that title was often used by writers indifferently with *comes*, on account of the similarity of character and dignity denoted by those names.<sup>1</sup> When the Danes had gained ascendancy in England, the ancient Danish title of *eorle* which signified "noble by birth," and was also used to indicate a similar dignity, was gradually substituted for that of *ealdorman*. At the Norman Conquest the title of *eorle*, or earl, was in universal use, and was so high a dignity, that in the earliest charters of William the Conqueror, he styles himself, in Latin, "Princeps Normannorum," and in Saxon, Eorle or Earl of Normandy. After the Conquest, the Norman name of count distinguished the noblemen who enjoyed this dignity, from whence the shires committed to their charge have ever since been called counties.<sup>2</sup> In the course of time the original title of earl was revived: but their wives, and peeresses of that rank in their own right, have always retained the French or Norman name of countesses.

Viscounts.

Between the dignities of earl and baron no rank intervened, in England, until the reign of Henry VI.: but in France the title of viscount, as subordinate of that of count, was very ancient. In England, the title of viscount was first conferred upon John Beaumont, Viscount Beaumont, by Henry VI., in the eighteenth year of his reign; and a place was assigned to him in Parliament above the barons.<sup>3</sup> The rank and precedence of a viscount were more distinctly defined by patent, in the 23rd Henry VI., to be above the heirs and sons of earls, and immediately after the earls themselves.

Barons.

Barons are often mentioned in the councils of the Saxon kings, and in the laws of Edward the Confessor were classed with the archbishops, bishops and earls: but the name bore different significations, and no distinct dignity was annexed to it, as in later times. After the Conquest, every dignity was attached to the possession of lands, which were held immediately of the king, subject

<sup>1</sup> West, Inq., 3. 460; Spelman on Feuds and Tenures, 13; 1st Rep. Dignity of Peer, 17; Kemble, Saxons, ii. 131-150; Palgrave, Engl. Com. Part I. 591.

<sup>2</sup> Palgrave, Engl. Com. part I. 118. 326, 327; Kemble, Saxons, ii. 149; Hal-

lam, Mid. Ages, ii. 271; Tit. of Hon. part 2, Chap. V., s. 2; 3rd Rep. Dignity of Peer, 86.

<sup>3</sup> Tit. of Hon. part 2, Ch. III., s. 19, Ch. V., s. 31.

to feudal services. The lands which were granted by William the Conqueror to his followers descended to their posterity; and those who held lands of the Crown *per baroniam* were ennobled by the dignity of baron. By the feudal system, every tenant was bound to attend the court of his immediate superior; and hence it was the duty of the barons, as tenants *in capite* of the king, to attend the king's court or council: but although their obligation to attend the king's council was one of the services incident to their tenure, they received writs of summons from the king when their attendance was required. At length, when the lands became subdivided, and the tenants *per baroniam* were consequently more numerous and poor, some of them only were summoned by writ, and thus they were gradually separated into greater and lesser barons: of whom the former continued to receive particular writs of summons from the king, and the latter a general summons only through the sheriffs. The feudal tenure of the baronies afterwards became unnecessary to create the dignity of a baron, and the king's writ or patent, and occasionally an Act of Parliament, or creation "*in pleno Parlamento*," conferred the dignity and the seat in Parliament.<sup>1</sup> The condition of the lesser barons, after their separation from their more powerful brethren, will be presently explained (see p. 14).<sup>2</sup>

On the union with Scotland, in 1707, the Scottish Peers were not admitted, as a class, to seats in the British Parliament: but, in pursuance of the provisions of several statutes, they elect for each Parliament sixteen representatives from their own body.<sup>2</sup> The representative peers of Scotland enjoy all the privileges of Parliament, including the right of sitting upon the trials of peers; and all peers of Scotland are peers of Great Britain, and have rank and precedence immediately after the peers of the like orders and degrees in England, at the time of the union, and before all peers of Great Britain of the like orders and degrees created since the union, and are to be tried as peers, and enjoy all privileges as peers, except the right of sitting in Parliament, or upon the trials of peers.<sup>3</sup> The Scottish peerage consists exclusively of the descendants of peers before the union, as no provision was made for any subsequent creation of

Representative  
peers of  
Scotland.

<sup>1</sup> Tit. of Hon. part 2, Ch. V., ss. 16, *et seq.*; West, Inq., 6. 13. 30. 31. 36. 64. 71; 3rd Rep. Dignity of Peer, 97, *et seq.*; Hallam, Mid. Ages, iii. 129.

<sup>2</sup> Act of Union, 6 Ann. c. 11, art. xxii. &

xxiii.; Act of the Parliament of Scotland, 1707, c. 8; 6 Ann. c. 78; 10 & 11 Vict. c. 52; 14 & 15 Vict. c. 87; 15 & 16 Vict. c. 35.

<sup>3</sup> Act of Union, 6 Ann. c. 11, art. xxiii.

Scottish peers by the Crown. An authentic list of the peerage was entered in the roll of peers, by order of the House of Lords, on the 12th February, 1708, to which other peerages have since been added, by order of that house, when claims have been established; and in order to prevent the assumption of dormant and extinct peerages, it is provided, by the Representative Peers (Scotland) Act, 1847 (10 & 11 Vict. c. 52), that no title standing in that roll, in right of which no vote has been given since 1800, shall be called over at an election, without an order of the House of Lords.<sup>1</sup> The House of Lords, when they have disallowed any claim, may also order that such title shall not be called over at any future election. The Act of Union provides that "in case of the death or legal incapacity" of any one of the representative peers of Scotland, the peers of Scotland shall nominate another of their own number in his place, but it would seem that a vacancy among the representative peers is not caused when one of them is created a peer of the United Kingdom.<sup>2</sup>

Representative  
peers of  
Ireland.

Under the Act for the legislative union with Ireland, which came into operation in 1801, the Irish peers elect twenty-eight representatives for life from the peerage of Ireland.<sup>3</sup> By that Act, the power of the King to add to the number of Irish peers is subject to limitation. He may make promotions in the peerage at all times; but can only create a new Irish peer as often as three of the peerages of Ireland, which were in existence at the time of the union, have

<sup>1</sup> Similar provision was made in the case of peerages in respect of which no vote had been received or counted for fifty years by 14 & 15 Vict. c. 87, s. 4.

<sup>2</sup> Act of Union, 6 Ann. c. 11, ss. 6 & 7. The modern practice when either a Scotch or Irish representative peer is created a peer of the United Kingdom is as stated in the text. The Earl of Strathmore and Kinghorne, a representative peer of Scotland, created a baron of the United Kingdom with the title of Lord Bowes during the Parliament of 1886-92, sat throughout the Parliament as baron, and as representative peer of Scotland. Similarly the Earl de Montalt, an Irish representative peer who was created a peer of the United Kingdom in 1886 with the title of Viscount Hawarden, continued a representative peer of Ireland until his death in 1905, and Lord Curzon of Kedleston, who had

been elected as a representative peer of Ireland in 1908, continued to sit as a representative peer after being created a peer of the United Kingdom in 1911. 119 L. J. 320; 137 ib. 62; 144 ib. 28. In the case of the Duke of Queensbury and the Earl of Abercorn, created peers of the United Kingdom (13th Feb. 1787), the Lords resolved that they therefore ceased to sit as Scotch representative peers, 26 Parl. Hist. 597; 37 L. J. 594.

<sup>3</sup> By the 45 & 46 Vict. c. 26, the period from the test of the writs to the return was reduced from fifty-two days to thirty days. The omission of an Irish peer to establish his right to vote at an election of representative peers does not prevent him from being chosen as a representative peer, 140 L. J. 5. 6. 19, 182 Parl. Deb. 4. s. 5; 21 H. L. Deb. 5 s. 35.



become extinct.<sup>1</sup> But if it should happen that the number of Irish peers,—exclusive of those holding any peerage of the United Kingdom, which entitles them to an hereditary seat in the House of Lords,—should be reduced to one hundred, then one new Irish peerage may be created as often as one of such hundred peerages becomes extinct, or as often as an Irish peer becomes entitled, by descent or creation, to an hereditary seat in Parliament. The object of that article of union was to keep up the Irish peerage to the number of one hundred, exclusive of Irish peers who may be entitled, by descent or creation, to an hereditary seat in the House of Lords of the United Kingdom.<sup>2</sup> The representative peers of Ireland are entitled to the privileges of Lords of Parliament, and all the peers of Ireland have privilege of peerage.<sup>3</sup> They may be elected as members of the House of Commons, for any place in Great Britain: but while sitting there, they do not enjoy the privilege of peerage.<sup>4</sup>

Life peerages were formerly not unknown in our constitution; <sup>5</sup> Life peerages. and in 1856 Queen Victoria, having been advised to revive the dignity, with a view to improve the appellate jurisdiction of the House of Lords, created Sir James Parke, late one of the barons of the Court of Exchequer, by letters-patent, Baron Wensleydale, “for and during the term of his natural life.” But the House of Lords referred these letters-patent to a Committee of Privileges, which, after examining all the precedents of life peerages, reported their opinion, “that neither the said letters-patent, nor the said letters-patent with the usual writ of summons issued in pursuance thereof, can enable the grantee therein named to sit and vote in Parliament.” The house concurred in this opinion, and Lord Wensleydale, therefore, did not offer to take the oaths and his seat, but was shortly afterwards created an hereditary baron, in the usual form.<sup>6</sup> The expediency of creating life peers, however, continued to be discussed.<sup>7</sup> Provision was made by statute for the constitution

<sup>1</sup> See Fermoy Peerage case, 1856, 5 H. L. Cas. 716; 140 H. D. 3 s. 698; 88 L. J. 150, 336.

<sup>2</sup> Of late years, vacancies in the Irish peerage have not been filled up, Parl. Pap. (H. L.) sess. 1874, No. 140. Address to Queen Victoria, 107 L. J. 337, 225 H. D. 3 s. 1210; Lord Inchiquin's Irish Peerage Bills, 1876 and 1877; Parl. Pap. (H. L.) sess. 1877, No. 148. Since 1877 one Irish peerage has been created; see *London Gazette*, 21st Oct.

1898, p. 6140.

<sup>3</sup> See *Coates v. Lord Hawarden*, 7 B. & C. 388.

<sup>4</sup> 39 & 40 Geo. III. c. 67, Fourth Article.

<sup>5</sup> Parl. Pap. (H. L.) sess. 1856, No. 18.

<sup>6</sup> Parl. Pap. (H. L.) sess. 1856, No. 18, p. 106; 88 L. J. 38; 140 H. D. 3 s. 263. 1290; May, Const. Hist. i. 196-201.

<sup>7</sup> 142 H. D. 3 s. 780, &c.; 143 ib. 428, &c.

of four lords of appeal in ordinary in 1876, and the number was increased to six in 1913. They enjoy the rank of baron and are entitled to a writ of summons for life, but their dignity does not descend to their heirs.<sup>1</sup>

Lords spiritual and temporal form one body.

The two estates of lords spiritual and lords temporal, thus constituted, may originally have had an equal voice in all matters deliberated upon, and had separate places for their discussion: but at a very early period they are found to constitute one assembly; and for many centuries past, though retaining their distinct character and denominations, they have been, practically, but one estate of the realm. Thus the Act of Uniformity (1st Eliz. c. 2) was passed by the queen, the lords temporal and the commons, although the whole estate of the lords spiritual dissented. The votes of the spiritual and temporal lords are intermixed, and the joint majority of the members of both estates determine every question: but they sit apart, on separate benches, the place assigned to the lords spiritual being the upper part of the house, on the right hand of the throne. The lords temporal are the hereditary peers of the realm, whose blood is ennobled, and whose dignities can only be lost by attainder, or taken away by Act of Parliament: <sup>2</sup> but the bishops, not being ennobled in blood, are, as declared by the Lords' standing order No. 66, only lords of Parliament, and not peers.

By constant additions to the peerage the number of members of the House of Lords, comprising the several orders, spiritual and temporal, of which it is constituted, has been raised to over 600.<sup>3</sup>

III. The House of Commons.

III. The third estate is that of the Commons of the realm.<sup>4</sup> The date of their admission to a place in the legislature has been a subject of controversy among historians and constitutional writers; of whom some have traced their claims up to the Saxon period, while others deny them any share in the government until long after the Conquest. Without entering minutely into this subject, a brief statement will

<sup>1</sup> 39 & 40 Vict. c. 59, ss. 6, 14; 50 & 51 Vict. c. 70, s. 2; 3 & 4 Geo. V. c. 21, s. 1. The precedence of a baron's wife and child was granted to the wife and children respectively of a lord of appeal in ordinary by the Royal Warrants of the 22nd Dec. 1876 and 30th March, 1898. *London Gazette*, 16th August, 1898, p. 4935.

<sup>2</sup> 12 Co. Rep. 107; 12 Mod. 56; 1 Bl. Com. 402; 3rd Rep. Dignity of Peer, 93; Burnet, ii. 202.

<sup>3</sup> In February, 1916, there were 658.—*Roll of Lords Spiritual and Temporal*.

<sup>4</sup> Until 1872, the ancient terms of knights, citizens, and burgesses, barons of the cinque ports and burgesses of the universities, were used in the writs and returns; but by the Parliamentary and Municipal Elections Act, 1872, these distinctions were discontinued, and all are alike termed members, in the writs and returns.

serve to unfold the ancient character of the House of Commons, and to render its present constitution the more intelligible.

• It is agreed by writers of learning and authority, that the Commons formed part of the great synods or councils before the Conquest: but how they were summoned or selected, and what degree of power they possessed, is a matter of doubt and obscurity. Under the Saxon kings, the forms of local government were undoubtedly popular. The shire-gemót was a kind of county Parliament, over which the ealdorman, or earl of the shire, presided, with the bishop, the shire-gerieve, or sheriff, and the assessors appointed to assist their deliberations upon points of law. A shire-gemót was held at least twice a year in every county, when the magistrates, thanes and abbots, with all the clergy and landowners, were required to be present; and a variety of business was transacted: but the proceedings of these assemblies generally partook more of the character of a court of justice, than of a legislative body.

• That the constitution of the witenagemót, or national council, was equally popular, cannot be affirmed with confidence. Although the smaller proprietors of land may not have been actually disqualified by law from taking part in the proceedings; yet the distance of the council from their homes must practically have prevented them from attending. It has been conjectured that they were represented by their tithing men, and the inhabitants of towns by their chief magistrates: but no system of election or political representation, properly so called, can be distinctly traced back to that time.

The clergy may have been virtually represented by the bishops and abbots, and the absent laity of each shire by the ealdorman, the sheriff and such of the rich proprietors of land as may have been able to attend the gemót.<sup>1</sup> The people may thus have been held to be present at the making of laws, and their name accordingly introduced into the records. That they were actually present on some occasions, is certain: but their right to attend, either by themselves or by elected representatives, is incapable of historical proof.<sup>2</sup>

But whatever may have been the position of the people in the

The Conquest.

<sup>1</sup> Kemble, Saxons, ii. 193-201.

<sup>2</sup> Palgrave, Eng. Com. part 1. 314. 634-658, and part 2. cccxix. ccclxxv.; Turner, Hist. of the Anglo-Saxons, iii. 180.

184; Thorpe, Leg. Sax. i. 358; Anglo-Saxon Chronicle, 1020; Ingulfus, 863; Stubbs, Const. Hist. i. 121.

Saxon government, the Conquest and the strictly feudal character of the Norman institutions must have brought them completely under the subjection of their feudal superiors; and it is probable that the commonalty, as a class, were not admitted to any share in the national councils, until some time after the Conquest, but were bound by the acts of their feudal lords; and that the Norman councils were formed of the spiritual lords, and mainly, if not exclusively, of the tenants in chief of the Crown, who held by military service.<sup>1</sup>

Knights of  
the shire.

Consistently with the feudal character of the Norman councils, the first knights of the shire are supposed to have been the lesser barons, who, though still summoned to Parliament, gradually forebore to attend, and selected some of the richest and most influential of their body to represent them. The words of the charter of King John favour this position; for it is there promised that the greater barons shall be summoned personally by letters from the king, and all other tenants in chief under the Crown by the sheriffs and bailiffs.<sup>2</sup> The summons to the lesser barons being thus only general, no peculiar obligation of personal attendance was imposed; and, as their numbers increased, and their wealth was subdivided, they were naturally reluctant to incur the charge of distant journeys, and the mortification of being held in slight esteem by the greater barons. This position receives confirmation from the ancient law of Scotland,<sup>3</sup> in which the small barons and free tenants were classed together, and jointly required to send representatives. To the tenants in chief by knight's service were added, from time to time, the representatives of the richer cities and boroughs; and this addition to the legislature may be regarded as the origin of the Commons as a distinct estate of the realm in Parliament.

Citizens  
and bur-  
gesses.

It is not known at what time these important changes in the constitution of Parliament occurred, for no mention is made of the Commons in any of the early records after the Conquest.<sup>4</sup> The

<sup>1</sup> 1st Rep. Dignity of Peer, 34.

<sup>2</sup> Magna Carta s. 14; Stubbs, Sel. Ch. 290.

<sup>3</sup> 1427. c. 102 [edition 1681].

<sup>4</sup> William the Conqueror, in the fourth year of his reign, is said by Roger de Hoveden to have summoned, by the advice of his barons, noble and wise men, learned in the law of England, twelve of whom were chosen out of every county to show

what the customs of the kingdom were, (Hoveden, Chronica, ii. 218). This assembly, which was declared by Lord Hale to have been "as sufficient and effectual a Parliament as ever was held in England," was said in earlier editions of this work to have borne little resemblance to a legal summons of the commonalty, as an estate of the realm. Later historians have gone further and thrown grave

laws and charters of William and his immediate successors constantly mention councils of bishops, abbots, barons and the chief persons of the kingdom, but are silent as to the Commons. In the 22nd year of Henry II. (1176), Benedict Abbas relates that, about the feast of S. Paul the king came to Northampton and there held a great council concerning the statutes of his realm in the presence of the bishops, earls and barons of his dominions, and with the advice of his knights and *men*. This is the first chronicle which appears to include the Commons in the national councils: but it would be too vague to elucidate the inquiry, even if its authority were of a higher order. Again, in the 15th of King John (1213), a writ was directed to the sheriff of each county, "to send four discreet knights to confer with us concerning the affairs of our kingdom:" but it does not appear whether they were elected by the county or picked at pleasure by the sheriff.<sup>1</sup>

Two years afterwards, the great charter of King John defined the constitution of Parliament more clearly than any earlier record. Magna Carta of King John.

"The main constitution of Parliament, as it now stands," says Blackstone, "was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the great charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons personally, and all other tenants in chief under the Crown by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary."

Notwithstanding the distinctness of this promise, the charters of Henry III. omitted the engagement to summon the tenants in chief by the sheriff and bailiffs; and it is doubtful whether they were summoned or not in the early part of that reign, but a writ of the 38th year (1254) is extant, which involves the principle of representation more distinctly than any previous writ or charter. It requires the sheriff of each county to cause to come before the king's council two good and discreet knights of his county, *whom the men of the county shall have chosen for this purpose*, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king.<sup>2</sup> This, however, was for a particular occasion only; and to appear before the council is not to vote as an estate of the realm. Moreover, the practice of summoning

doubts upon the reliability of Hoveden's statement. 1 Hale, C. L. 202; Hallam, *Med. Ages*, iii. 11; 1 Pollock and Maitland, *History of English Law* (1895) 81;

*English Historical Review*, xxx. 396.

<sup>1</sup> Prynn, 2nd Register, 16; see also Palgrave, *Eng. Com.* chap. ix.

<sup>2</sup> Prynn, 2nd Register, 22.

citizens and others before the council, for particular purposes, continued long after the regular summons of members to Parliament from cities and boroughs had begun.<sup>1</sup> Nevertheless, representation of some kind then existed, and it is interesting to observe how early the people had a share in granting subsidies. Another writ, in 1261, directs the sheriffs to cause knights to repair from each county to the king at Windsor.<sup>2</sup> At length, in the 49th Henry III. (1265), writs were issued to the sheriffs by Simon de Montfort, Earl of Leicester, in the king's name, directing them to return two knights for each county, and two citizens or burgesses for every city or borough. From this time may be clearly dated the recognition of the Commons, as an estate of the realm in Parliament;<sup>3</sup> and there is evidence to prove that they were repeatedly assembled by Edward I., especially in the 11th year (1283), the 18th year (1290) and 22nd year (1294) of his reign.<sup>4</sup> In the 23rd Edward I. (1295) that body met which has become known as the Model Parliament, to which, in addition to the archbishops, bishops, heads of religious houses, abbots, earls and barons, there were summoned two knights from each shire, two citizens for each city, and two burgesses for each borough, and representatives of the cathedral and parochial clergy.<sup>5</sup>

In his confirmation of the charters in 1297, 1299 and 1301 Edward I. agreed that his recent exactions should not be drawn into a precedent. It is also recited that "for no business from henceforth will we take such manner of aids, tasks nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed." The common assent of the realm which had been used in connection with the imposition of taxation in Magna Carta is henceforward identified with the assent of the three estates of the realm in Parliament.<sup>6</sup> The right of the Commons to tax themselves being thus acknowledged, a few years later a general power of legislation was also recognized as inherent in them. A statute was passed in the 15th Edward II.

<sup>1</sup> For instances in the reign of Edward III. and Richard II. see Rep. Dignity of Peer, App. I. 450. 457. 458. 509. 474. 741; Rym. Fœd. vol. 3, pt. i. 186.

<sup>2</sup> Pryne, 2nd Register, 27.

<sup>3</sup> See Lord Lyttleton, Hist. of Henry II. ii. 276; iv. 79, *et seq.*; Stubbs, Const. Hist. ii. 92.

<sup>4</sup> See Table of Writs 1st Rep. Dignity of Peer, 489; Writs of Summons to Parlia-

ment, by Palgrave, 1827-1834; Parry, Parliaments and Councils of England, Intr. and 49-69; Ruffhead, Pref. to Statutes. The writ of the 22nd Edward I. is for knights only. Colchester, iii. 27. 40. 47. 54-66; Maitland, Const. Hist. 74.

<sup>5</sup> Stubbs, Const. Hist. ii. 223; Maitland, Const. Hist. 74.

<sup>6</sup> Stubbs, Sen. Ch. 485; Maitland, Const. Hist. 96.

(1922), which declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament, by the king and by the assent of the prelates, earls, and barons, and the commonalty of the realm, *according as had been before accustomed.*"<sup>1</sup> It may be added, in conclusion, that during the reign of Edward III. the Commons were regularly mentioned in the enacting part of the statutes, having been rarely mentioned there in previous reigns.<sup>2</sup>

The three estates of the realm originally sat together in one chamber.<sup>3</sup> When the lesser barons began to secede from personal attendance, as a body, and to send representatives, they continued to sit with the greater barons as before: but when they were joined by the citizens and burgesses, who, by reason of their order, had no claim to sit with the barons, it is natural that they should have consulted with the other representatives, although they continued to sit in the same chamber as the Lords. The ancient treatise, "*De modo tenendi Parliamentum,*" if of unquestioned authority, would be conclusive of the fact that the three estates ordinarily sat together: but that, when any difficult and doubtful case of peace or war arose, each estate sat separately, by direction of the king. But this work can claim no higher antiquity than the reign of Richard II., and its authority is only useful so far as it may be evidence of tradition, believed and relied on at that period. Misled by its supposed authenticity, Sir Edward Coke and Elsynge entertained no doubt of the fact as there stated; and the former alleged that he had seen a record of the 30th Henry I. (1130), of the degrees and seats of the Lords and Commons as one body; and that the separation took place at the desire of the Commons.<sup>4</sup>

Lords and Commons originally sat in one chamber.

The union of the two houses is sometimes deduced from the supposed absence of a Speaker of the Commons in early times: and Sir Edward Coke inferred that the Commons had no Speaker so late as the 28th Edward I. (1300).<sup>5</sup> No decided opinion can be formed from the fact of Speakers of the Commons not having been mentioned in earlier times; for if they consulted apart from the

<sup>1</sup> Hallam, *Const. Hist.* i. 4, n.; see also Guizot, *Histoire des origines du Gouvernement Représentatif en Europe*; Sir Roger Twysden's *Traict, Camden Soc. Pub.* 1846; Stubbs, *Const. Hist.* chap. xiv.-xvi.

<sup>2</sup> Hallam, *Mid. Ages*, iii. 48; Cotton, *Preface*.

<sup>3</sup> See, however, Stubbs, *Const. Hist.* iii. 430.

<sup>4</sup> 13 State Tr. 1410.

<sup>5</sup> 4 Co. Inst. 2.

Lords, a Speaker would have been as necessary to preside over their deliberations, as when a more complete separation ensued. In the 44th Henry III. (1259-60) Peter de Montfort signed and sealed an answer of the Parliament to Pope Alexander after the Lords, "*vice totius communitatis*."<sup>1</sup> But the first Speaker of the Commons to whom that title was expressly given was Sir Thomas Hungerford, in the 51st Edward III. (1376-7).<sup>2</sup>

It appears from several entries in the rolls of Parliament in the early part of the reign of Edward III., that after the cause of summons had been declared by the king to the three estates collectively, the prelates with the clergy consulted by themselves; the earls and barons by themselves; and the Commons, and sometimes even the citizens and burgesses,<sup>3</sup> by themselves; and that they all delivered their joint answer to the king.<sup>4</sup>

The inquiry, however, is of little moment, for whether the Commons sat with the Lords in a distinct part of the same chamber, or in separate houses as at present, it can scarcely be contended that, at any time after the admission of the citizens and burgesses, the Commons voted with the Lords as one assembly. The chief business of Parliament was the voting of subsidies, and the bishops granted one subsidy, the lords temporal another, and the Commons again a separate subsidy for themselves.<sup>5</sup> The Commons could not have had a voice in the grants of the other estates; and although the authority of their name was used in the sanction of Acts of Parliament, they ordinarily appeared as petitioners. In that character it is not conceivable that they could have voted with the Lords; and it is well known that down to the reign of Henry VI., no laws were actually written and enacted until the end of the Parliament.

When separated.

Various dates have been assigned for the formal separation of

<sup>1</sup> Elsynge, 155; Hakowel, 200. See also Dasent, Speakers, 34.

<sup>2</sup> 2 Rot. Parl. 374; 2 Hatsell, 2.2; Hallam, Mid. Ages, iii. 58. In 1377 Sir Peter de la Mare was chosen Speaker, 3 Rot. Parl. 5. He is said erroneously in the Parliamentary History to be the first on record, 1 Parl. Hist. 159; 2 Hatsell, 212.

<sup>3</sup> In the 46th Edward III., after the Parliament had granted supplies, and the petitions of the Commons had been read and answered, the knights of the shire

had leave to depart, and writs for their wages and expenses were made out for them by the chancellor's order: but he commanded the citizens and burgesses to stay, who, being again assembled before the prince, prelates, and lords, granted for the safe conveying their ships and goods 2s. on every tun of wine imported or exported out of the kingdom, and 6d. in the pound on all their goods and merchandise for one year, 2 Rot. Parl. 310.

<sup>4</sup> 2 Rot. Parl. 66. 69; Elsynge, 102.

<sup>5</sup> Hallam, Mid. Ages, iii. 37.



the two houses, some as early as the 49th Henry III. (1264),<sup>1</sup> and others as late as the 17th Edward III. (1348):<sup>2</sup> but as it is admitted that they often sat apart for deliberation, particular instances in which they met in different places will not determine whether their separation, at those times, was temporary or permanent. When the Commons deliberated apart, they sat in the chapter-house of the abbot of Westminster; and they continued their sittings in that place after their final separation.<sup>3</sup>

In the reign of Henry VIII. the title "Member of our Parliament" was applied indifferently to the members of either house of Parliament, but since the Restoration the title of Member of Parliament has been used as the designation of a member of the House of Commons.<sup>4</sup>

Member  
of Parlia-  
ment.

The number of members admitted to the House of Commons has varied considerably at different periods. In addition to those boroughs which appear from the first to have returned burgesses to Parliament, many others had that privilege conferred upon them by charter or by statute, in succeeding reigns; while some were omitted by the negligence or corruption of sheriffs, and others were discharged from what they considered a heavy burthen—the expense of maintaining their members. In the reign of Henry VI., there were not more than 300 members of the House of Commons, being about 25 more than in the reign of Edward I., and 50 more than in the reign of Edward III. The legislature added 27 for Wales,<sup>5</sup> and four for the county and city of Chester,<sup>6</sup> in the reign of Henry VIII., and four for the county and city of Durham, in the reign of Charles II.;<sup>7</sup> while 180 new members were added by royal charter between the reigns of Henry VIII. and Charles II.<sup>8</sup>

Number  
of the  
Commons  
at dif-  
ferent  
times.

Forty-five members were assigned to Scotland, as her proportion of members in the British Parliament, on the union of that kingdom

Union of  
Scotland  
and Ire-  
land.

<sup>1</sup> Per Lord Ellenborough, in *Burdett v. Abbot* (1811), 14 East, at p. 137.

<sup>2</sup> Carte, ii. 451.

<sup>3</sup> Elsynge, 104; 1 Parl. Hist. 91; 2 Rot. Parl. 289. 351. The first known place of assembly of the Commons apart from the Lords was the Painted Chamber in the Palace of Westminster where they sat in 1343, the Lords sitting in the *Chambre Blanche*, 2 Rot. Parl. 136. 237a. For a full account of the various meeting places of the Commons until their removal to St. Stephen's Chapel in 1547, see Dasent, *Speakers*, 41. On the restora-

tion of the Palace of Westminster after the fire, 16th Oct. 1834, the Chambers allotted to the Houses of Parliament were first used by the Lords, 13th April, 1847: by the Commons, 30th May, 1850, 105 C. J. 377.

<sup>4</sup> State Papers, iii. 395. Gardiner's *Commonwealth and Protectorate*, i. 296, n. 2. See, however, 22 H. L. Deb. 5 s. 82.

<sup>5</sup> 27 Hen. VIII. c. 26.

<sup>6</sup> 34 Hen. VIII. c. 13.

<sup>7</sup> 25 Car. II. c. 9.

<sup>8</sup> Christian's *Notes to Blackstone*; 2 Hatsell, 413.

with England ; and one hundred to Ireland at the commencement of the nineteenth century, when her Parliament became incorporated with that of the United Kingdom. By these successive additions the number was increased to 658 ; and notwithstanding the changes effected in the distribution of the elective franchise by the Reform Acts in 1832, that number continued unaltered, except by the disfranchisement of certain cities and boroughs for corruption, until the year 1885, when the number of the house was raised to 670 by the operation of the Redistribution of Seats Act, 1885 (see p. 21).

The representation for England and Wales.

The object of the English Reform Act of 1832,<sup>1</sup> as stated in the preamble, was to correct divers abuses that had long prevailed in the choice of members. The right of returning members was taken from many inconsiderable places, and granted to large, populous, and wealthy towns. The number of knights of the shire was increased to 159, several of the counties being divided into electoral districts or divisions, and the elective franchise was considerably extended. To effect these changes, 56 boroughs in England and Wales were entirely disfranchised, and 30, which had previously returned two members, were restricted to one member ; while 42 new boroughs were created, of which 22 were each to return two members, and 20 a single member. Several small boroughs in Wales were united for the purpose of contributing to return a member. The result of these and other local arrangements, which it is not necessary to describe, was that the two universities and the several cities and boroughs contributed 341 citizens and burgesses for England and Wales.

By the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), the boroughs of Totnes, Reigate, Yarmouth, and Lancaster were disfranchised ; 38 boroughs previously returning two members were reduced to one. Manchester, Liverpool, Birmingham, and Leeds each received a third member ; Merthyr Tydfil and Salford each a second member ; the Tower Hamlets were divided into two boroughs, each returning two members ; 10 new boroughs were created, of which Chelsea returned two members, and every other borough one only. By these arrangements the representatives for boroughs were reduced by 26 ; and the University of London became entitled to return one member. But before this Act came into operation, seven English boroughs, viz. Arundel, Ashburton, Dartmouth, Honiton, Lyme Regis, Thetford and Wells, were disfranchised by the Representation

<sup>1</sup> 2 & 3 Will. IV. c. 45.

of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), and the seats added to Scotland. By the Act of 1867, 13 counties were further divided, receiving an addition of 25 members. By the Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), the representation of England and Wales was subjected to the following rearrangement: 53 counties, in 253 divisions, return 253 members; 143 cities and boroughs, in 215 divisions, return 237 members; 3 universities return 5 members; making a total number of 495 for England and Wales.

The number of members for Scotland was increased by the Scotch Reform Act of 1832<sup>1</sup> from 45 to 53; 30 of whom were commissioners of shires, and 23 commissioners of burghs, representing towns, burghs, or districts of small burghs. By the Representation of the People (Scotland) Act, 1868, the number of members for Scotland was increased to 60; three new members being given to shires, two to the universities, and two to cities and burghs; and under the Act of 1885 Scotland returns for 34 counties, in 39 divisions, 39 members; for 7 cities and towns, 18 members; for 13 districts of burghs, 13 members; for 4 universities, 2 members; making a total number of 72 members for Scotland.

By the Irish Reform Act of 1832,<sup>2</sup> the number of representatives for Ireland in the Imperial Parliament was increased from 100 to 105; 64 being for counties, 39 for cities and boroughs, and two for the University of Dublin. By the Representation of the People (Ireland) Act, 1868 (31 & 32 Vict. c. 49), no change was made in the number of members representing that part of the United Kingdom, nor in the distribution of seats: but the previously disfranchised boroughs of Sligo and Cashel were left without representation; and under the Act of 1885 Ireland returns for 32 counties, 85 members; for 9 cities and boroughs, 16 members; for 1 university, 2 members; making a total number of 103 members for Ireland.<sup>3</sup>

Constituencies were liable from the earliest times for the expense of maintaining their members during their attendance upon Parlia-  
Payment of Mem-  
bers.

<sup>1</sup> 2 & 3 Will. IV. c. 65.

<sup>2</sup> 1b. c. 88.

<sup>3</sup> After the day of the first meeting of the Irish Parliament constituted by the Government of Ireland Act, 1914, the number of members for Ireland is to be reduced to forty-two unless and until the Parliament of the United Kingdom otherwise determine. The constituencies by which these forty-two members

are to be elected are substituted for the existing constituencies, and are set out in the second part of the 1st Schedule of the Act. No University in Ireland is to return a member to the Parliament of the United Kingdom. 4 & 5 Geo. V. c. 90, s. 13. For the special representation of Ireland in the House of Commons for the purpose of the revision of the financial provisions of the Act, see 1b. s. 26 (3).

ment. This liability was fixed in 1523 at four shillings a day for a knight of the shire and two shillings a day for a citizen or burgess.<sup>1</sup> Provision was made for the payment of wages to the Welsh members when the representative system was extended to Wales in the reign of Henry VIII.,<sup>2</sup> although the practice of paying wages was falling into desuetude already in England. The practice had disappeared by the beginning of the seventeenth century save in a few isolated cases, but the legal liability of the constituencies for these payments to their members has never been removed.<sup>3</sup>

In the nineteenth century there was a movement in favour of the payment of members out of national funds. A provision to that effect was included in the Reform Bill introduced by Lord Blandford in 1830,<sup>4</sup> and formed one of the items of the People's Charter presented to the House of Commons in 1839.<sup>5</sup> Motions in favour of the proposal were brought before the House of Commons in 1892 and 1893,<sup>6</sup> and in 1895 a resolution in favour of the payment of a reasonable allowance to members was agreed to.<sup>7</sup> In 1911 the expediency of paying a salary of four hundred pounds a year to members who were not in receipt of salaries as ministers, officers of the House or officers of His Majesty's Household was put to the test of the opinion of the House of Commons by a motion made by a member of the government. This motion was carried and a vote was submitted to the Committee of Supply to carry out the views of the House. This vote was agreed to and was embodied in the Appropriation Act of the year.<sup>8</sup> Similar provision has been made in subsequent sessions.<sup>9</sup>

<sup>1</sup> Prynn, 4th Register, 53. 495. 4 Co. Inst. 46. Hallam, *Med. Ages*, iii. 114, *n*.

<sup>2</sup> 27 Henry VIII. c. 26; 34 & 35 ib. c. 26.

<sup>3</sup> Although the last authenticated payment of wages was probably that of Kingston-upon-Hull to Andrew Marvell until his death in 1678, a writ "*de expensis burgensium levandis*" was issued against the borough of Harwich, at the instance of its member, Mr. Thomas King, as late as 1681. Campbell, *Lives*, iii. 420.

<sup>4</sup> 22 H. D. 2 s. 689.

<sup>5</sup> 94 C. J. 339.

<sup>6</sup> 147 ib. 135; 148 ib. 160.

<sup>7</sup> 150 ib. 108.

<sup>8</sup> 166 ib. 400, 406. 1 & 2 Geo. V. c. 15, Schedule B. Part 7.

<sup>9</sup> The payment authorised in session 1912-13 was the vote of £400 a year to 630 members, *Parl. Pap. (H. C.) sess. 1912-13*, No. 6, p. 89. In the following session the payment was declared to include an allowance of £100 for expenses, *Parl. Pap. (H. C.) sess. 1913*, No. 226, p. 4 (Revised Estimate). See also Public Accounts Committee 2nd Report, *Parl. Pap. (H. C.) sess. 1913*, No. 174, p. iv. The payment made to members has been held to be "salary or income" within the meaning of section 51 of the Bankruptcy (Ireland) Amendment Act, 1872, and an order appropriating a portion thereof for the benefit of creditors has been held to be good, *Hollinshead v. Hazleton*, [1916] 1 A. C. 428. A deduction is not made from a member's salary

The persons by whom the members of the House of Commons are elected may be described generally in a few words, if the legal questions connected with the franchise, which are both numerous and intricate, be avoided. To begin with the English counties. Before the 8th Henry VI. (1429) all freeholders or suitors present at the county court<sup>1</sup> or, as is affirmed by some, all freemen, had a right to vote: but by a statute passed in that year (c. 7), the right was limited to "people dwelling and resident in the same counties, whereof every one of them shall have free land or tenement to the value of 40s. by the year, at the least, above all charges." By the Reform Act of 1832 this franchise of a 40s. freehold of inheritance was not disturbed: but limitations were imposed upon freehold tenures for life. No person, if not seised at the passing of the Act, was entitled to vote in respect of such tenures, unless he was in *bonâ fide* occupation of lands and tenements, or unless they came to him by marriage, marriage-settlement, devise or promotion to any benefice or office, or unless they were of the clear yearly value of 10*l.*, which value was reduced to 5*l.* by the Representation of the People Act, 1867. Copyholders having an estate of 10*l.* a year; leaseholders of land of that value whose leases were originally granted for 60 years; leaseholders of 50*l.*, with 20 years' leases; and tenants-at-will occupying lands or tenements paying a rent of not less than 50*l.* a year, had the right of voting conferred upon them by the Reform Act of 1832. The Representation of the People Act, 1867, reduced the franchise of copyholders and leaseholders from 10*l.* to 5*l.*, and the occupation franchise from 50*l.* to 12*l.*

Constitu-  
ency of  
English  
counties

In cities and boroughs the right of voting formerly varied according to the ancient custom prevailing in each. With certain modifications, some of these ancient rights were retained by the Reform Act of 1832, as that of freemen, and other corporate qualifications: but all occupiers of houses of the clear yearly value of 10*l.* were enfranchised by that Act. The Representation of the People Act, 1867,

Of cities  
and  
boroughs.

in respect of pay received by him as an officer of the Territorial Force, 70 H. C. Deb. 5 s. 1258; and a proposal made in March, 1915, to make deductions from the salaries of Members of Parliament on active service in respect of the pay drawn by them from Army and Navy votes, was criticised adversely by the House, and was not persisted in, 70 H. C.

Deb. 5 s. 1257. 1701. 1745. On April 6th, 1916, a motion declaring that a member should not receive both his salary and in addition full naval or military pay was made by the Government, but withdrawn, 171 C. J. 49, 81 H. C. Deb. 5 s. 1388. See also revised estimate, Parl. Pap. (H. C.) sess. 1916, No. 75.

<sup>1</sup> See 7 Hen. IV. c. 15.

extended the borough franchise to all occupiers of dwelling-houses<sup>1</sup> who have resided for twelve months on the 31st July in any year and have been rated to the poor rates as ordinary occupiers, and have on or before the 20th July paid such rates up to the preceding 5th January,<sup>2</sup> and to lodgers who have occupied, for the same period, lodgings<sup>3</sup> of the annual value, unfurnished, of 10*l.* By the Poor Rate Assessment and Collection Act, 1869, owners may pay the rates upon houses under 20*l.*, without disqualifying the occupier; and vestries may rate the owner instead of the occupier.

In Scot-  
land.

The Scotch Reform Act of 1832 reserved the rights of all persons who were then on the roll of freeholders of any shire, or were entitled to be put upon it, and extended the franchise to all owners of property of the clear yearly value of 10*l.*, and to certain classes of leaseholders. In cities, towns, and burghs, the Act substituted a 10*l.* household franchise for the system of electing members by the town councils, which had previously existed. By the Representation of the People (Scotland) Act, 1868, the county franchise was extended to owners of land and heritages of 5*l.* yearly value, and to occupiers of the rateable value of 14*l.*; and the borough franchise to all occupiers of dwelling-houses paying their rates; and to tenants of lodgings of 10*l.* clear annual value, unfurnished.

In Ireland.

In Ireland various classes of freeholders and leaseholders were invested with the county franchise, by the Reform Act of 1832, to whom were added, by the Representation of the People (Ireland) Act, 1850, occupiers of land, rated for the poor rate at a net annual value of 12*l.*; and persons entitled to estates in fee, or in tail, or for life, of the rated value of 5*l.* The latter Act, added to the borough constituency under the Reform Act, the occupiers of lands or premises rated at 8*l.* By the Representation of the People (Ireland) Act, 1868, the borough franchise was extended to occupiers of houses rated at 4*l.*, and of lodgings of the annual value of 10*l.* unfurnished. No change was made in the qualification of county voters.

By the Representation of the People Act, 1884 (48 Vict. c. 3), a uniform household franchise and a uniform lodger franchise are established in all counties and boroughs throughout the United Kingdom. The franchise is also extended to those who inhabit

<sup>1</sup> Dwelling-house defined and 15th July substituted for 31st July by 41 & 42 Vict. c. 26, ss. 5, 7; and see 41 & 42 Vict. cc. 3, 5 (House Occupiers' Disqualification

Removal Acts, England and Scotland).

<sup>2</sup> 30 & 31 Vict. c. 102, s. 3.

<sup>3</sup> Lodgings more fully defined by 41 & 42 Vict. c. 26, ss. 5, 6.

dwelling-houses by virtue of any office, service, or employment; and the county and borough 10*l.* occupation franchise is substituted, in the counties, for the 12*l.* rateable value occupation franchise of 1867, and, as regards boroughs, for the 10*l.* occupation franchise of 1832.<sup>1</sup>

By whatever right these various classes of persons claim to vote, Registration. either for counties or for cities and boroughs, they must be registered in lists prepared by the overseers of each parish.<sup>2</sup> On certain days courts are held, by barristers appointed by the Lord Chief Justice of England and the Senior Judge of each Summer Circuit, to revise these lists, when claims may be made by persons omitted, and objections may be offered to any name inserted by the overseers.<sup>3</sup> If an objection be sustained, the name is struck off the list; and the claimant has no right to vote at any ensuing election unless he succeeds at a subsequent registration, in establishing his claim: but, in certain cases, there is an appeal to the King's Bench Division of the High Court of Justice from the decisions of revising barristers;<sup>4</sup> and the register is corrected, when necessary, in accordance with the judgment of that court.

The last change which took place in the law relating to registration was effected by the Registration Act, 1885 (48 & 49 Vict. c. 15). The chief peculiarity of this Act is the extension of the borough system of registration to counties, the far greater minuteness with which the duties of overseers are defined, and the elaborate instructions and directions given to them in the precepts in the schedules of the Act.<sup>5</sup>

It has not been attempted to explain, in detail, all the distinctions Qualification of voters. of the elective franchise; neither is it proposed to state all the grounds upon which persons may be disqualified from voting.<sup>6</sup> Aliens,

<sup>1</sup> Stephen's Blackstone, ed. 1890, ii. 364; Rogers on Elections, i. c. 76.

<sup>2</sup> In Scotland the lists of voters are prepared by the valuation assessor of each burgh, county or division of a county (19 & 20 Vict. c. 58, s. 2, 31 & 32 Vict. c. 48, s. 20, 48 & 49 Vict. c. 3, s. 8 (6)), and in Ireland by the clerk of the peace in a county, and the town clerk in a borough (13 & 14 Vict. c. 69, ss. 21, 33).

<sup>3</sup> In Scotland the revision is conducted by the sheriffs (19 & 20 Vict. c. 58, s. 19), and in Ireland by the county court judges and assistant revising barristers appointed by the Lord Lieutenant (13 & 14 Vict. c. 69, s. 47, 36 & 37 Vict. c. 2, s. 3, 49 &

50 Vict. c. 43).

<sup>4</sup> 2 & 3 Will. IV. c. 45; 6 & 7 Vict. c. 18; 41 & 42 Vict. c. 26. In Scotland the appeal lies to the Registration Court which is constituted of three judges of the Court of Session (31 & 32 Vict. c. 48, ss. 22, 23), and in Ireland to the Court of Appeal (13 & 14 Vict. c. 69, s. 74, and 40 & 41 Vict. c. 57, s. 23).

<sup>5</sup> Rogers on Elections, i. 241.

<sup>6</sup> As to the disqualification of women for voting at parliamentary elections, see *Chorlton v. Lings* (1868), L. R. 4 C. P. 374; *Nairn v. University of St. Andrews*, [1909] A. C. 147. See also 4 Co. Inst. 4, 5.



persons under twenty-one years of age, of unsound mind, in receipt of parochial relief, or convicted of certain offences, are incapable of voting. Many officers, also, concerned in the collection of the revenue were formerly disqualified: but by recent statutes all these disabilities have been removed.<sup>1</sup>

Qualifications and disqualifications of members.

The legal qualifications and disqualifications for sitting and voting in both houses of Parliament will now be considered. It must be borne in mind that the disqualifications attaching to members of the Parliaments of Great Britain and of Ireland have been extended by statute to the members of the Parliament of the United Kingdom of Great Britain and Ireland.<sup>2</sup>

Abolition of property and residence qualifications.

The property qualification which, since the reign of Queen Anne,<sup>3</sup> had been required for members sitting for places in England and Ireland, was in the year 1858 abolished by the Act 21 & 22 Vict. c. 26. Formerly it was necessary that the member chosen should himself be one of the body represented.<sup>4</sup> The law, however, was constantly disregarded, and in 1774 was repealed.<sup>5</sup>

Sex.  
Aliens.

A woman is at common law not eligible to serve in Parliament.<sup>6</sup>

An alien is disqualified to be a member of either House of Parliament.<sup>7</sup> The Act of Settlement (12 & 13 Will. III. c. 2) declared that "no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or <sup>8</sup> made a denizen, except such as are born of English parents), shall be capable to be of the privy council, or a member of either House of Parliament." The Act 1 Geo. I. stat. 2, c. 4, in order to enforce the provisions of the Act of Settlement, required a special clause of disqualification to be inserted in every Naturalization Act: but as no clause of this nature could bind future Parliaments, occasional exceptions were permitted, as in the cases of Prince Leopold in 1816, and Prince Albert in 1840; <sup>9</sup> and this provision of the Act

<sup>1</sup> The right of voting was restored to revenue officers by Acts 31 & 32 Vict. c. 73, and 37 & 38 Vict. c. 22.

<sup>2</sup> 41 Geo. III. c. 52, ss. 1, 2.

<sup>3</sup> By 9 Anne, c. 5; 33 Geo. II. c. 20; 1 & 2 Vict. c. 48.

<sup>4</sup> 1 Peck. 19; 1 Hen. V. c. 1; 8 Hen. VI. c. 7; 10 Hen. VI. c. 2; 23 Hen. VI. c. 15.

<sup>5</sup> 14 Geo. III. c. 58.

<sup>6</sup> Whitelocke on the King's Writ, i. 475.

<sup>7</sup> 7 & 8 Vict. c. 66, s. 6.

<sup>8</sup> The words "naturalized or" were repealed by 4 & 5 Geo. V. c. 17, s. 2 (2), but their repeal does not revive in the case of a naturalized alien the disqualification for membership of the Privy Council or of Parliament created by the Act of Settlement, *Rex v. Speyer*, *Rex v. Cassel*, [1916] 1 K. B. 595, 2 A. C. 858.

<sup>9</sup> In 1765 the judges were unanimously of opinion, "That an alien married to a king or Great Britain, by operation of the law of the Crown (which is part of the common law), to be deemed as a



of George I. was repealed by the Act 7 & 8 Vict. c. 66, s. 2. Later Naturalization Acts have since been passed, without such a disqualifying clause.<sup>1</sup> By the Naturalization Act, 1870 (33 & 34 Vict. c. 14), an alien to whom a certificate of naturalization was granted by the Secretary of State became entitled to all political and other rights, powers and privileges, and was made subject to all the obligations of a British subject. This provision was repealed and re-enacted by section 3 (1) of the British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. V. c. 17), which also declared that as from the date of his naturalization such a person should "have to all intents and purposes the status of a natural-born British subject."<sup>2</sup>

By standing order No. 12, the Lords prescribe that no lord under *Minors* the age of twenty-one years shall sit in their house.<sup>3</sup> By the 7 & 8 Will. III. c. 25, s. 8, a minor was disqualified for election to the House of Commons. Before the passing of that Act, several members were notoriously under age, yet their sitting was not objected to. Sir Edward Coke said that they sat "by connivance: but if questioned would be put out;"<sup>4</sup> yet on the 16th December, 1690, on the hearing of a controverted election, Mr. Trenchard, though admitted by his counsel to be a minor, was declared upon a division to be duly elected.<sup>5</sup> Even after the passing of the Act some minors sat "by connivance." Charles James Fox was returned for Midhurst when he was nineteen years and four months old, and sat and spoke before he was of age;<sup>6</sup> and Lord John Russell was returned for Tavistock a month before he came of age.<sup>7</sup>

By the law of Parliament a member already returned for one place is ineligible for any other, until his first seat is vacated; and hence it is the practice for a member, desiring to represent some other place, to accept the Chiltern Hundreds, or other similar office under the Crown, in order to render himself eligible at the election.

At one time it was doubted whether a candidate claiming a seat in Parliament by petition, was eligible for another place before the

Members  
already  
sitting.

Petition-  
ing candi-  
dates  
eligible.

natural-born person from the time of such marriage, so as not to be disabled by the Act 12 Will. III." 31 L. J. 174.

<sup>1</sup> Lowther's Naturalization Act, 1866; Bischoffsheim, Baron de Ferrieres, and Lange's Acts, 1867; Bolckow's Act, 1868; De Virte's and Mackay's Acts, 1877; Raminge's Act, 1880.

<sup>2</sup> See also 35 & 36 Vict. c. 39.

<sup>3</sup> For a similar provision in the case of

representative peers of Scotland see Act of Union, 6 Ann. c. 11, ss. 6, 7.

<sup>4</sup> 10th March, 1623; 1 C. J. 681.

<sup>5</sup> 2 Hatsell, 9; 10 C. J. 508; see, however, the case of Sir Wilfred Lawson, 1717, 18 C. J. 672.

<sup>6</sup> Fox, Memorials, i. 51.

<sup>7</sup> Earl Russell, Recollections and Suggestions, 1.

determination of his claim : but it was resolved, on the 16th April, 1728, " that a person petitioning, and thereby claiming a seat for one place, is capable of being elected and returned, pending such petition." <sup>1</sup>

Mental  
imbecility.

Mental imbecility is a disqualification ; and should a member, who was sane at the time of his election, afterwards become a lunatic, his seat may be dealt with under the provisions of the Lunacy (Vacating of Seats) Act, 1886.<sup>2</sup> If a member is placed in a lunatic asylum, the duty of sending a certificate of the fact to the Speaker, is laid upon every person on whose order or certificate the member was received, committed or detained ; or any two members may certify to the Speaker that they are credibly informed that the member has been placed in an asylum. The Speaker, upon the receipt of such certificate, forthwith transmits it to the commissioners of the Board of Control,<sup>3</sup> constituted under the Mental Deficiency Act, 1913, who, without delay, will examine the member to whom the certificate relates, and report to the Speaker whether he is of unsound mind. The Speaker, at the expiration of six months from the date of such report, requires the commissioners to re-examine the member in question, and on their report that he is still of unsound mind, the seat of the member becomes vacant. The Speaker lays the reports upon the table, and issues his warrant to the Clerk of the Crown to make out a new writ for the election of a member to supply the vacant seat.<sup>4</sup>

Pension-  
holders.

The holders of certain pensions from the Crown are disqualified by statute,<sup>5</sup> but diplomatic pensions, and pensions, &c., for civil services, under the Superannuation Acts, do not disqualify the holder from being elected, or sitting or voting, as a member of the House of Commons.<sup>6</sup>

Judges,  
&c.

The English, Scotch and Irish judges are disqualified for membership of the House of Commons.<sup>7</sup> County Court judges are also

<sup>1</sup> 21 C. J. 135 ; 2 Hatsell, 73. In case the petitioner should establish his claim to the disputed seat, the proper course would appear to be to allow him to make his election for which place he would serve, in the same manner as if he had been returned for both places at a general election (see p. 578). It seems also that a person returned for one place may petition for another, Rogers on Elections, ii. 195.

<sup>2</sup> For the law on this subject prior to 1886, see D'Ewes, 126 ; 1 C. J. 75 ; Mr. Alcock's case, 1811, 66 ib. 226. 265. App.

(687). There is a curious entry in the Journal of 14th Feb., 1609. " Hassard—69—incurable—bed-ridden—a new writ : " 1 ib. 392 ; case of Mr. A. Steuart, 162 H. D. 3 s. 1941 ; Rogers on Elections, ii. 4. 45.

<sup>3</sup> 6 & 7 Geo. V. c. 31, s. 11.

<sup>4</sup> 171 C. J. 190. 191.

<sup>5</sup> 6 Ann. c. 41, s. 24 ; 1 Geo. I. st. 2, c. 56.

<sup>6</sup> 32 & 33 Vict. c. 15 ; Ib. c. 43, s. 17.

<sup>7</sup> The English judges, by the law of Parliament, 1 C. J. 257 ; and by the Judicature Act, 1873, s. 9 ; and Judicature

ineligible.<sup>1</sup> A recorder is eligible to serve in Parliament except for the borough of which he is recorder.<sup>2</sup>

The sheriff of a county is not eligible for that county : nor is a returning officer capable of being elected for his own city or borough.<sup>3</sup> By the Scotch Reform Act, 1832 (s. 36), no sheriff substitute, sheriff clerk, or deputy sheriff clerk is entitled to be elected for his own shire ; nor any town clerk, or deputy town clerk, for his own city, burgh, town, or district.

By the House of Commons (Clergy Disqualification) Act, 1801, which was passed in consequence of Mr. Horne Tooke's election, it is declared that " no person having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland, is capable of being elected ; " and that if he should sit or vote, he is liable to forfeit 500*l.* for each day, to any one who may sue for the same.<sup>4</sup> The Roman Catholic clergy were also excluded by the Roman Catholic Relief Act, 1829. But by the Clerical Disabilities Act, 1870, when a person has relinquished in due form his office of priest or deacon in the Church of England, he is discharged from all disabilities and disqualifications, including that of the House of Commons (Clergy Disqualification) Act, 1801, and is therefore eligible to sit in Parliament.

Government contractors, being supposed to be liable to the influence of their employers, are disqualified from serving in Parliament. The House of Commons (Disqualification) Act, 1792 (22 Geo. III. c. 45), declares that any person who shall, directly or indirectly, himself, or by any one in trust for him, undertake any contract with a govern-

Contractors.

Act Amendment Act, 1875, s. 5 ; the Scotch judges, by 7 Geo. II. c. 16 ; the Irish judges, by 1 & 2 Geo. IV. c. 44 ; the judge of the Admiralty Court, by 3 & 4 Vict. c. 66 ; see Debate on the Judges' Exclusion Bill, 127 H. D. 3 s. 994. The Master of the Rolls alone enjoyed an exemption from this disability until the passing of the Judicature Act, 1873.

<sup>1</sup> 51 & 52 Vict. c. 43, s. 8.

<sup>2</sup> 3 & 4 Vict. c. 108, s. 66 ; 45 & 46 Vict. c. 50, s. 162. New writs issued on acceptance of office, 125 C. J. 412 ; 148 ib. 392. 615 ; 150 ib. 3 ; 161 ib. 414 ; 162 ib. 415 ; 163 ib. 47 ; 164 ib. 69 ; 165 ib. 13 ; 166 ib. 344 ; 167 ib. 3 ; 169 ib. 430 ; 170 ib. 84. 288.

<sup>3</sup> Rogers on Elections, ii. 6 ; 2 Hatsell, 30-34 ; 4 Dougl. El. Cas. 87. 123 ; 9 C. J.

725 (Thetford Case) ; Wakefield Case, Bar. & Aust. 295.

<sup>4</sup> Mr. Horne Tooke was excepted from the Act ; 35 Parl. Hist. 1343. 1402. 1412. 1541. For the former law on this subject, see 8 C. J. 341. 346 ; 1 ib. 27 (13th Oct. 1553) ; 1 ib. 513 (8th Feb. 1620) ; 2 Hatsell, 12. On and after the date of disestablishment of the Church in Wales a person in holy orders holding an ecclesiastical office in Wales is exempted from these disqualifications and penalties. The same exemption is extended to a person in holy orders not holding an ecclesiastical office, if the last ecclesiastical office held by him was one in the Church in Wales, 4 & 5 Geo. V. c. 91, s. 2 (4).

ment department, shall be incapable of being elected, or of sitting or voting during the time he shall hold such contract, or any share thereof, or any benefit or emolument arising from the same; <sup>1</sup> but the Act does not affect incorporated trading companies contracting in their corporate capacity. The penalties for violations of the Act are severe. A contractor sitting or voting is liable to forfeit 500*l.* for every day on which he shall sit or vote, to any person who may sue for the same; and every person against whom this penalty shall be recovered, is incapable of holding any contract. The Act also imposes a penalty of 500*l.* upon any person who admits a member of the House of Commons to a share of a contract.<sup>2</sup> Section four of the House of Commons (Disqualifications) Act, 1801 (41 Geo. III. c. 52), disqualifies in the same manner, and under similar penalties, all persons holding contracts with any of the government departments in Ireland.

Contractors to India Office.

It was decided in 1913 that contracts made with the Secretary of State for India in Council entailed the same disqualification upon the contractors. Attention was directed in 1912 to the fact that a member of the House of Commons was concerned through the firm of which he was a partner in such a contract. The matter was referred to a Select Committee, who were given leave to hear counsel to such an extent as they saw fit.<sup>3</sup> The Committee suggested to the House that, as they were unable to come to a unanimous decision on the questions of law involved, those questions should be submitted for determination to the Judicial Committee of the Privy Council, under section four of the Judicial Committee Act, 1833,<sup>4</sup> and in a subsequent report the facts relating to the contracts were detailed.<sup>5</sup> An Address was presented to the King praying that the matters of law involved in the case should be referred to the Judicial Committee and that the House should be informed of their decision.<sup>6</sup> The Judicial Committee, whose Report was presented as a parliamentary paper by the King's command, decided that by reason of the facts which had been reported by the Select Committee the member in question was disabled from sitting and voting in the House

<sup>1</sup> For cases of issue of writ in consequence of a member holding a contract, see 135 C. J. 241; 159 C. J. 15. 16.

<sup>2</sup> See Report on case of Sir Sydney Waterlow, 124 C. J. 82, Parl. Pap. (H. C.) sess. 1868-9, No. 78.

<sup>3</sup> 167 C. J. 419. 430.

<sup>4</sup> Parl. Pap. (H. C.) sess. 1912-13, No. 406, p. iii.

<sup>5</sup> Parl. Pap. (H. C.) sess. 1912-13, No. 452, p. iii.

<sup>6</sup> 167 C. J. 519.

of Commons.<sup>1</sup> The House resolved that the member in question had vacated his seat and a new writ was ordered.<sup>2</sup>

The provisions of the House of Commons (Disqualifications) Acts have been held not to apply to contractors for government loans. Loan contractors. In June, 1855, the attention of the house was directed to the fact that Messrs. Rothschild had entered into a contract with the government for a loan of 16,000,000*l.* for the public service; and a committee was appointed to inquire whether Baron Lionel Nathan de Rothschild, who was a partner in that house, had vacated his seat by reason of this contract. The committee, after hearing Baron Rothschild, by counsel, reported their opinion that there was no contract, agreement, or commission between Messrs. Rothschild and the Treasury within the true intent and meaning of the House of Commons (Disqualification) Act, 1782,<sup>3</sup> and a clause to this effect has been introduced into the Acts since passed for raising loans.<sup>4</sup>

By sections 32 & 33 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), a debtor who is adjudged bankrupt is incapable of being elected to or of sitting or voting in the House of Commons, or on any committee thereof, until the adjudication is annulled, or until he obtains from the court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part. In the case of a member of the House of Commons if the disqualifications imposed by the Act are not removed within six months from the date of the order, the court is required to certify the bankruptcy to the Speaker:<sup>5</sup> the seat of the member thereupon becomes vacant; and, if the house be then sitting, a new writ is issued;<sup>6</sup> or if the Speaker receives the certificate during a parliamentary recess, he issues his warrant for a new writ to supply the vacancy which the bankruptcy has created (see p. 575). As no penalty attaches to a bankrupt for sitting and voting, and as no official notice of his bankruptcy is required to be given to the Speaker for six months, a bankrupt member may sit with impunity, unless

<sup>1</sup> Cd. 6748, [1913] A. C. 514.

<sup>2</sup> 168 C. J. 83. For actions for the recovery of penalties for improperly sitting and voting see *Forbes v. Samuel*, [1913] 3 K. B. 706, *Burnett v. Samuel*, ib. 742, *Bird v. Samuel*, 30 T. L. R. 323. A bill to indemnify the member was presented but was not proceeded with, 168

C. J. 129.

<sup>3</sup> 110 C. J. 325; Parl. Pap. (H. C.) sess. 1855, No. 401.

<sup>4</sup> *E.g.* Finance Act, 1914 (sess. 2), 5 Geo. V. c. 7, s. 14 (2).

<sup>5</sup> 4 & 5 Geo. V. c. 59, s. 106 (2).

<sup>6</sup> See 85 C. J. 3, for the form of proceeding in such cases.

the house take notice that he is incapable of sitting and voting, and order him to withdraw.<sup>1</sup> The disqualification created by the Bankruptcy Act, 1883, s. 32, is, by the Bankruptcy Act, 1890, s. 9, limited to the period of five years from the date of a discharge under either Act. These Bankruptcy Acts do not extend to Scotland or Ireland, except so far as regards persons adjudicated bankrupt in England: but the provisions of ss. 32 and 33 are, with modifications framed to meet the bankruptcy procedure of Scotland, applied, by the Bankruptcy (Scotland) Act, 1913, to persons who have been adjudged bankrupt in Scotland.<sup>2</sup> Members who become bankrupt in Ireland are subject to the provisions of the Members of Parliament (Bankruptcy) Act, 1812 (52 Geo. III. c. 144), and the Bankruptcy (Ireland) Amendment Act, 1872 (35 & 36 Vict. c. 58), which relate to the incapacity of a member for sitting and voting, and in effect resemble the provisions of the Bankruptcy Act, 1883, except that the certificate of the court and consequent vacation of the seat are postponed until one year after the bankruptcy.<sup>3</sup> A person adjudged bankrupt, in England or Scotland, accordingly is ineligible as a member for any constituency; but a person adjudged bankrupt under the law in force in Ireland, is capable of being elected by any constituency.<sup>4</sup>

Bank-  
ruptcy.  
House of  
Lords.

A debtor adjudged bankrupt is by the Bankruptcy Act, 1883, s. 32, disqualified for sitting and voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords: though the disqualification can be removed if the adjudication is annulled, or if the bankrupt obtains his discharge, with a certificate that the bankruptcy was caused by misfortune, and not by misconduct.<sup>5</sup> In England a peer becomes bankrupt when an order has been made under any Act adjudging him a bankrupt: in Scotland, when sequestration of his estate has been awarded: in Ireland, when he is adjudged bankrupt. The court certifies the bankruptcy to the Speaker of the House of Lords and the Clerk of the Crown;<sup>6</sup> and a writ of summons is not to be issued to any peer for the time being disqualified.<sup>7</sup> When a bankruptcy has been determined in the manner

<sup>1</sup> 113 C. J. 229.

<sup>2</sup> 3 & 4 Geo. V. c. 20, s. 183. The certificate that the bankruptcy was caused by misfortune and without misconduct on the part of the bankrupt is not required in Scotland, *Ib.* s. 183 (3) (b).

<sup>3</sup> See *London Gazette*, 18th Sept. 1903, p. 5783, 159 C. J. 4; 164 *ib.* 307, 7 H. C.

*Deb.* 5 s. 2305.

<sup>4</sup> See Rogers on Elections, ii. 31.

<sup>5</sup> For the extent and application of this Act, see the preceding paragraph.

<sup>6</sup> 4 & 5 Geo. V. c. 59, s. 106 (1).

<sup>7</sup> For the application of the Act to peers, see 104 L. J. 138, 206, 321, 322, 342, 429; 142 *ib.* 285; 147 *ib.* 305, 376.



prescribed by the law, these disqualifications cease. A representative peer for Scotland or Ireland vacates his seat unless his bankruptcy is determined within one year, and a new election is held. A disqualified peer is not deprived of his privileges of peerage, or entitled to be elected to or to sit in the House of Commons. A disqualified person who sits or votes in the House of Lords, or attempts to sit or vote, is guilty of a breach of privilege.<sup>1</sup>

By the Bankruptcy Act, 1914, s. 128, and the Bankruptcy (Ireland) Amendment Act, 1873, s. 40, if a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with as if he had not such privilege.

A person attainted,<sup>2</sup> or adjudged guilty,<sup>3</sup> of treason or felony, and not having endured the punishment to which he was adjudged or received a pardon,<sup>4</sup> is disqualified for membership of either house of parliament: but an indictment for felony causes no disqualification until conviction.<sup>5</sup> Even after conviction a new writ has not been issued, when a writ of error was pending, until the judgment had been affirmed.<sup>6</sup>

English peers are ineligible to the House of Commons as having a seat in the upper house; and Scotch peers, as being represented there, by virtue of the Act of Union.<sup>7</sup> If a member of the House of Commons succeeds to a peerage in virtue of which he

20 H. L. Deb. 5 s. 45. 959; 21 ib. 203. For a case in which the certificate was rescinded, see 113 L. J. 24. 140.

<sup>1</sup> 34 & 35 Vict. c. 50 (partially repealed as to England).

<sup>2</sup> See 4 Co. Inst. 47.

<sup>3</sup> W. Smith O'Brien, 104 C. J. 319, 105 H. D. 3 s. 667. In the case of O'Donovan Rossa, convicted under the Treason-Felony Act, 11 & 12 Vict. c. 12, it was contended that, not being attainted, there was no disqualification; but the house determined that "Jeremiah O'Donovan Rossa, having been adjudged guilty of felony, and sentenced to penal servitude for life, and being now imprisoned under such sentence, has become, and continues incapable of being elected or returned as a member of this house," 125 C. J. 27.

<sup>4</sup> 9 Geo. IV. c. 32, s. 3; 9 Geo. IV. c. 54, s. 33; 33 & 34 Vict. c. 23, s. 2; case of John Mitchel, Parl. Pap. (H. C.) sess. 1875, No. 50, 130 C. J. 49. 52, 222 H. D.

3 s. 493. John Mitchel having been re-elected, after a contest, a petition was filed against his return, and praying for the seat, when this ground of disqualification was confirmed by the Court of Common Pleas in Ireland, and the petitioner, who had given due notice of the disqualification, was seated as member for Tipperary; 3 O'M. & H. 37; case of Michael Davitt, 137 C. J. 77; case of John Daly, 150 ib. 353; case of Arthur Alfred Lynch, 158 ib. 40.

<sup>5</sup> 21st Jan. 1580, 1 C. J. 118. 119.

<sup>6</sup> 104 C. J. 319.

<sup>7</sup> The provisions of the law are sufficiently distinct upon that point, and there are numerous precedents of new writs issued in the room of members becoming peers of Scotland; e.g. Earl of Dysart, 10th Nov. 1707; Lord Galloway, 13th Jan. 1774; Earl of Lauderdale, 22nd Jan. 1790; Earl of Eglinton, 3rd Nov. 1796; Marquess of Queensberry, 3rd Feb. 1857, &c.

acquires a seat in the House of Lords or to a Scotch peerage, or is created a peer of the United Kingdom his seat in the House of Commons is vacated and a new writ is issued (see p. 571). An Irish peer, unless elected as one of the representative peers of Ireland, may sit for any place in Great Britain.<sup>1</sup>

Officers.

The holders of various offices are expressly excluded by statutes.<sup>2</sup> A large class of offices which incapacitate the holders for membership of the House of Commons are *new offices* or places of profit under the Crown created since the 25th October, 1705,<sup>3</sup> as defined by the Succession to the Crown Act, 1707,<sup>4</sup> and also new offices in Ireland as defined by the Irish Act, 33 Geo. III. c. 41.

Colonial governors and officers.

Colonial governors or deputy-governors, by sect. 24 of the Succession to the Crown Act, 1707, are incapable of being elected, or of sitting and voting; and if a member of the House of Commons accepts such a post his seat is vacated and he cannot seek re-election.<sup>5</sup>

Re-election of holders of old offices.

By the 25th section of the Succession to the Crown Act, 1707, if any member "shall accept of any office of profit from the Crown,"<sup>6</sup> during such time as he shall continue a member, his election shall be and is hereby declared to be void, and a new writ shall issue for a new election, as if such person, so accepting, was naturally dead; provided, nevertheless, that such person shall be capable of being again elected."<sup>7</sup>

<sup>1</sup> Act of Union, 39 & 40 Geo. III. c. 67.

<sup>2</sup> See Pamphlet by the Author, on the Consolidation of the Election Laws, 1950; and Index to Statutes, tit. House of Commons, 2 (a), (b).

<sup>3</sup> Mr. Whittle Harvey's case, 94 C. J. 48; Major Jervis, 121 C. J. 277; Mr. Forsyth's case, Counsel to Secretary of State for India, 121 ib. 220.

<sup>4</sup> 6 Ann. c. 41, s. 24.

<sup>5</sup> Sir A. Leith Hay, Governor of Bermuda, 1838; Sir J. R. Carnac, Lieutenant-governor of Bombay, and Mr. Poulett Thomson, Governor-general of Canada, 1839; Sir H. Hardinge, Governor-general of India, 1844; Sir H. Barkly, Governor of British Guiana, 1849; Sir John Young, Lord High Commissioner of the Ionian Islands, 1855; Mr. Grant Duff, Governor of Madras, 1881, &c. In 1878, a new writ was moved for the county of Clare, in the room of Sir Bryan O'Loughlen, who, since his election, had accepted the office of Attorney-general of Victoria: but as his seat had already

been vacated in the colonial legislature on the acceptance of office, and it being doubtful whether his appointment was from the Crown or the governor, the matter was considered by a select committee, and upon their report the house resolved, "That Sir Bryan O'Loughlen had vacated his seat," 133 C. J. 376. 415; 134 ib. 161; 245 H. D. 3 s. 1104.

<sup>6</sup> Section 9 of 41 Geo. III. c. 52 extends the disqualification of offices accepted from the Crown to offices conferred by the appointment and nomination, or by any other appointment subject to the approbation of the Lord Lieutenant of Ireland, Rogers on Elections, ii. 21 n., and 50.

<sup>7</sup> It is pointed out, in Rogers on Elections, ii. pp. 11. 46, that, although sec. 25 applies in terms to offices generally, old as well as new, its effect must of necessity be limited to old offices, as otherwise it would act as a partial repeal of sec. 24, by enabling holders of new offices within that section to be re-elected, who are by



By the 22 Geo. III. c. 82, not more than two principal secretaries of state could sit in the House of Commons; and not more than one under-secretary to each department would appear to have been admissible to the House of Commons under the House of Commons Disqualification Act, 1741 (15 Geo. II. c. 22, s. 8); and as doubts were entertained whether more than two under-secretaries could sit there, in practice there were, until 1855, only two under-secretaries who held seats in that house at the same time.<sup>1</sup> But on the establishment of the secretary of state for war in 1855, an Act was passed to enable a third principal secretary, and a third under-secretary, to sit in the House of Commons; and by the Government of India Act, 1858 (21 & 22 Vict. c. 106), on the appointment of a fifth secretary of state for India, it was provided that four principal and four under-secretaries might sit as members of the House of Commons at the same time. In 1864, notice was taken that five under-secretaries had been sitting in the house, in violation of the latter Act, and a motion was made that the seat of the fifth under-secretary had been vacated. The house, however, referred the question to a committee, who reported that the seat of the under-secretary last appointed was not vacated.<sup>2</sup> At the same time, as the law had been inadvertently infringed, it was thought necessary to pass a bill of indemnity. The House of Commons (Vacation of Seats) Act, 1864 (27 & 28 Vict. c. 34), was also passed, providing that in future, if, when there are four under-secretaries in the house, another member accepts the office of under-secretary, his seat shall be vacated, and he shall not be re-eligible while four other under-secretaries continue to sit in the house. If five secretaries or under-

Under-secretaries of state.

that section rendered incapable of being elected, and of sitting in the house; and the effect of the words in the definition of the offices, "from the Crown" and "under the Crown," is also explained. For similar provisions in respect of offices subsequently created, see 29 & 30 Vict. c. 55 (postmaster-general); 34 & 35 Vict. c. 70, s. 4 (president of the local government board); 48 & 49 Vict. c. 61, s. 3 (secretary for Scotland); 52 & 53 Vict. c. 30, s. 8 (president of board of agriculture); 62 & 63 Vict. c. 33, s. 8 (1) (president of the board of education); 5 & 6 Geo. V. c. 51 (minister of munitions, see also 6 & 7 Geo. V. c. 22, s. 1 (1)); 6 & 7 Geo. V. c. 65, s. 7 (minister of pensions); 6 & 7 Geo. V. c. 68, s. 12

(minister of labour, food controller, shipping controller, and president of the air board). See also amendment of 7 Geo. IV. c. 32 (president of board of trade) by 51 & 52 Vict. c. 57. Members who accepted office during May and June, 1915, were absolved from the necessity of seeking re-election (5 & 6 Geo. V. c. 50), but for the purposes of transfer to other offices are to be treated as if they had been elected since accepting office (6 & 7 Geo. V. c. 22, s. 1 (2) (3)). For similar provisions in the case of members accepting office in December, 1916, and January, 1917, see 6 & 7 Geo. V. c. 56.

<sup>1</sup> 2 Hatsell, 63, n.

<sup>2</sup> 174 H. D. 3 s. 1218, 1231, &c.

secretaries are returned at a general election, none shall be capable of sitting and voting until the number is reduced to the statutory limit. The same rules are further applied to other offices, in the case of which the number of persons holding them who may sit in the House of Commons at the same time is limited by statute.<sup>1</sup>

Offices  
in succe-  
sion.

If one of his Majesty's principal secretaries of state should be transferred from one department to another, his seat is not vacated, as there is no such division of departments in the office of secretary of state as to render them distinct offices under the Crown. Certain offices are specified in the Reform Acts of 1867 and 1868 the acceptance of one of which in lieu of, and immediate succession to, another of them, does not involve the vacation of a seat. As the list comprises, or was intended to comprise, all the parliamentary offices under the Crown which vacate the seats of members, it may now be stated generally that any member who has already vacated his seat on the acceptance of one of these offices, is not required to vacate it, on the immediate acceptance of another in lieu of it.<sup>2</sup> But if he has held an office which did not vacate his seat, a new writ is issued on his acceptance of another office by which his seat is vacated by law.<sup>3</sup> The resumption of an office which has been resigned, but to which no successor has been appointed, does not vacate a seat.

Offices  
which do  
not vacate  
a seat.

As the secretaries of the treasury, the several under-secretaries of state and the secretary to the admiralty are by the House of Commons Disqualification Act, 1741, qualified to sit in Parliament, their seats

<sup>1</sup> For the temporary cessation of the limitation on the number of under-secretaries, etc., who may sit in the House of Commons, see 6 & 7 Geo. V. c. 68, s. 9.

<sup>2</sup> 30 & 31 Vict. c. 102, s. 52, and sch. H. The like clauses and schedules are also comprised in the Scotch and Irish Reform Acts of 1868. The offices created since 1867, mentioned on page 34, note 7, have been added to these schedules by the Acts creating the offices or other statutes.

<sup>3</sup> Mr. Stansfield having been a commissioner of the treasury in 1868, was afterwards appointed secretary to the treasury, and in March, 1871, having accepted the office of commissioner for the relief of the poor, it became a question whether his seat was again vacated. A writ had been issued on his acceptance of one office in the schedule, and now he had accepted another; but the words of the Act are,

"where a person has been returned as a member to serve in Parliament since the acceptance by him, from the Crown, of any office described in schedule H to this Act annexed, the subsequent acceptance by him, from the Crown, of any other office or offices described in such schedule, in lieu of, and in immediate succession the one to the other, shall not vacate his seat; and as he had occupied an intermediate office, not in the schedule, a writ was issued for Halifax on the 8th March, 1871, 126 C. J. 77. A similar position was created in July, 1916, when Mr. Lloyd George, who had previously been chancellor of the exchequer, but held at the time the office of minister of munitions which had not then been added to the schedule, became a secretary of state. In this case, a new writ was not issued but the position was met by the passing of an Act of Parliament (6 & 7 Geo. V.

are not vacated ; and similar provisions have been made in respect of offices of the same character since created.<sup>1</sup>

By section 27 of the Succession of the Crown Act, 1707, the receipt of a new or other commission by a member who is in the army or navy, is excepted from the operation of the Act, and does not vacate his seat ;<sup>2</sup> and the same exception has been extended, by construction, to officers in the marines ;<sup>3</sup> and to the office of master-general or lieutenant-general in the ordnance, accepted by an officer in the army ;<sup>4</sup> and to military governments accepted by officers in the army.<sup>5</sup> On the 9th June, 1733, General Wade having accepted the office of governor of the three military forts in Scotland, it was resolved that the acceptance of such an office by a member, being an officer in the army, did not vacate his seat.<sup>6</sup> The acceptance of a commission in the yeomanry, territorial force or the reserve of officers does not vacate the seat of a member.<sup>7</sup>

• It has always been held that the office of ambassador, or other foreign minister, does not disqualify, nor its acceptance vacate the seat of a member : but the acceptance of the office of consul or consul-general has been deemed to vacate a seat, though the member was considered to be re-eligible.<sup>8</sup>

The Succession to the Crown Act, 1707, has, in some cases, been held not to apply to the acceptance of other offices of state, by gentlemen already holding office from the Crown. Thus the acceptance of the paid offices of lord justice in England and in Ireland, when held in conjunction with other offices of state, was ruled not to vacate seats in Parliament, as appears from the cases of Mr. Craggs, Mr. Walpole, and Lord Middleton.<sup>9</sup>

c. 22), 84 H. C. Deb. 5 s. 358. See also pp. 34, n. 7, and 38.

<sup>1</sup> See 30. & 31 Vict. c. 72 (office of parliamentary secretary to board of trade, substituted for vice-presidency of the board) ; 33 & 34 Vict. c. 17, ss. 2, 3 (surveyor general of ordnance and financial secretary to war office) ; 34 & 35 Vict. c. 70, s. 4 (one secretary of local government board) ; 62 & 63 Vict. c. 33, s. 8 (2) (one secretary of board of education) ; ib. c. 50, s. 1 (3) (vice-president of department of agriculture in Ireland), &c.

<sup>2</sup> "The receipt of any new commission in the army or navy, unless within this exception, disqualifies under sec. 24," Rogers on Elections, ii. 18.

<sup>3</sup> 2 Hatsell, 62, n.

<sup>4</sup> 22nd June, 1742, 24 C. J. 284.

<sup>5</sup> General Carpenter, Governor of Minorca, 1716 ; General Conway, Governor of Jersey, 1772, 17 Parl. Hist. 538 ; 2 Hatsell, 48. 52, n. ; 39 C. J. 970 ; 54 ib. 292.

<sup>6</sup> 22 C. J. 201.

<sup>7</sup> 45 & 46 Vict. c. 49, s. 38 ; 1 Edw. VII. c. 14, s. 1 ; 7 Edw. VII. c. 9, ss. 23 (1). 36. A similar exemption was extended in 1914 to members of the House of Commons who accepted new commissions in His Majesty's forces during the war, 5 Geo. V. c. 3.

<sup>8</sup> 2 Hatsell, 22. 54 ; 106 C. J. 12 (Dunbar writ).

<sup>9</sup> 2 Hatsell, 47.

First lord  
of the  
treasury,  
and chan-  
cellor of  
the ex-  
chequer.

After the Revolution of 1688, the office of lord high treasurer being executed by commissioners, it was customary for the first commissioner (or lord) of the treasury to hold also the office of chancellor of the exchequer. Among other examples may be mentioned that of Sir Robert Walpole in 1716, and again from 1721 to 1741; Mr. Pitt from 1783 to 1801, and again in 1804 until his death; Mr. Canning in 1827, and Sir Robert Peel in 1834. But as the two offices were generally accepted at the same time, no question arose as to the vacation of the seat. In 1770, however, Lord North, being then chancellor of the exchequer, accepted also the office of first lord of the treasury. On that occasion, no new writ was moved, nor was any doubt expressed as to the legal effect of the acceptance of this second office. Again, in October, 1809, Mr. Spencer Perceval, while chancellor of the exchequer, succeeded the Duke of Portland as first lord of the treasury, but retained his former office. Doubts were expressed by Lord Redesdale, whether he had not vacated his seat: but Lord Chancellor Eldon and Mr. Speaker Abbot agreed that he had not; and no new writ was issued.<sup>1</sup> In August, 1873, Mr. Gladstone, already first lord of the treasury, further assumed the office of chancellor of the exchequer. Controversy ensued as to the legal consequences of this proceeding: but as Parliament was dissolved during the recess, the complicated questions involved in this case, including former precedents under the Act of Anne, and the due construction of remedial provisions of the Reform Act of 1867, did not become the subject of adjudication.<sup>2</sup> In March, 1914, however, when Mr. Asquith accepted the office of one of his Majesty's principal secretaries of state in addition to the office of first lord of the treasury which he was holding at the time, he vacated his seat in accordance with the views of the law officers of the day as to his position.<sup>3</sup>

<sup>1</sup> Colchester, ii. 214, 215. Lord Eldon wrote, 25th Dec. 1809, "I think Mr. P.'s seat is not void by any acceptance of any office of profit since his election. The Act has not said that if the king gives an increase of profit to a person already holding an office of profit, his seat shall be void, but only that if any person accepts an office of profit his seat shall be void." "I think with you," wrote the Speaker, "that under the statute of Anne, there must be the concurrence of office and profit jointly in the new grant, which

is to vacate the seat: to re-accept the same office under a new commission has never, in practice, been held to vacate a seat; and the acceptance of a new annexation of profit to an office already in possession, has been considered equally free from the same consequences," Perceval, ii. 51, 54.

<sup>2</sup> Lord Selborne's Memorials (Part 2), i. 326, Morley's Gladstone, ii. 465.

<sup>3</sup> 169 C. J. 113, 60 H. C. Deb. 5 s. 841  
See also 88 H. C. Deb. 5 s. 1015.

In January, 1821, Mr. Bathurst held temporarily the presidentship of the board of control, without its emoluments, in connection with another cabinet office then held by him; and under those circumstances did not vacate his seat;<sup>1</sup> and the holder of a new office, created in 1887, of parliamentary under-secretary to the Lord-Lieutenant of Ireland, did not come within the scope of the House of Commons (Disqualifications) Act, 1801 (see p. 34, n. 6), because no salary or profit attached to the office.<sup>2</sup>

Offices without salary.

In 1861, Viscount Palmerston, while first lord of the treasury, accepted the honorary offices of Constable of Dover Castle and Lord Warden of the Cinque Ports, from which the salary formerly payable by the Crown had been withdrawn. Lord North and Mr. Pitt had vacated their seats on accepting these offices together with the salary attached to them: but doubts were now entertained whether they could any longer be regarded as offices of profit. It appeared, however, that the warrant granted "all manner of wrecks," and of "fees, rewards, commodities, emoluments, profits, perquisites, and other advantages whatsoever, to the said offices belonging," including the occupation of Walmer Castle; and, after full consideration, it was determined that a new writ should be issued.<sup>3</sup>

Lord warden of the cinque ports.

It is a settled principle of parliamentary law, that a member, after he is duly chosen, cannot relinquish his seat;<sup>4</sup> and, in order to evade this restriction, a member who wishes to retire, accepts office under the Crown, which legally vacates his seat, and obliges the house to order a new writ.<sup>5</sup> The offices usually selected for this purpose are the offices of steward or bailiff of his Majesty's three Chiltern Hundreds of Stoke, Desborough, and Burnham, or that of the steward of the manor of Northstead,<sup>6</sup> which, though the offices

Resignation of seats.

<sup>1</sup> Sidmouth, iii. 339.

<sup>2</sup> 313 H. D. 3 s. 888. 1003; see also p. 37, n. 9. In 1881 and 1906 new writs were issued in the cases of Mr. Herbert Gladstone and Mr. Fuller, who had accepted lordships of the treasury, without salary. A new writ was not issued in the case of a member, who having accepted a lordship of the treasury without salary before his election, was subsequently made a lord of the treasury with salary, 152 Parl. Deb. 4 s. 97. See also the answer to a question, 21st January, 1897, as to a member of the house acting as a commissioner of assize and also the personal explanation of the member himself, 45 ib. 196. 200.

<sup>3</sup> 116 C. J. 126; 146 ib. 269, 353 H. D. 3 s. 340.

<sup>4</sup> 1 C. J. 724; 2 ib. 201. In 1775, Mr. George Grenville moved for a bill to enable members to vacate their seats, 16 Parl. Hist. 411.

<sup>5</sup> A member may attain the same result if he admits some other disqualification for sitting and voting. See cases of Mr. Southey, 1826 (want of property qualification), 82 C. J. 28. 108; Mr. Cowan, 1847 (share in stationery office contract), 103 ib. 17. 102; Mr. Ramsay, 1874 (share in post office contract), 129 ib. 12.

<sup>6</sup> According to Hatsell, this practice

have sometimes been refused,<sup>1</sup> are ordinarily given by the treasury to any member who applies for them,<sup>2</sup> unless there appears to be sufficient ground for withholding them. The office is retained until the appointment is revoked to make way for the appointment of another holder thereof. These offices can be granted during a recess:<sup>3</sup> but the statutory power conferred on the Speaker, for the issue of a writ to fill up a vacancy caused by acceptance of office (see p. 575), does not extend to vacancies caused by the acceptance of these stewardships.<sup>4</sup> The acceptance of any of these offices, however, at once vacates the seat of a member, and qualifies him to be elected elsewhere, although no new writ can be issued for the place which has become vacant by his acceptance of office. These offices, indeed, are merely nominal: but as the warrants of appointment grant them "together with all wages, fees, allowances," &c., they assume the form of places of profit. All words, however, which formerly attached honour to the appointment, are omitted<sup>5</sup>, in order to remove any scandal in granting these offices to persons unworthy of the favour of the Crown, who may desire to vacate their seats in Parliament.<sup>5</sup>

Members  
vacating  
to be re-  
elected.

Sir Fitzroy Kelly, solicitor-general, having been returned for Harwich on the 15th April, 1852, immediately afterwards announced himself as a candidate for East Suffolk, the election for which county was appointed to be held on the 1st May. He had been returned for Harwich without opposition, yet on the 29th April a petition was

began about the year 1750. The first instance was that of Mr. John Pitt, on the 17th Jan. 1750, and the next that of Mr. Henry Vane, M.P. for Downton in 1753. The office of escheator of Munster was abolished in 1838. The offices of steward of the manors of East Hendred and Hempholme were last used for this purpose in 1840 and 1865 respectively. See appendix No. 5 to Report of select committee on House of Commons (Vacating of Seats), Parl. Pap. (H. C.) sess. 1894, No. 278, pp. 57, 58.

<sup>1</sup> See letter of Mr. Goulburn to Viscount Chelsea, Parl. Pap. (H. C.) sess. 1842, No. 544; and see 3 Lord Dalling, Life of Lord Palmerston, 103. In 1775, Lord North refused to give one of these offices to Mr. Bayly, who desired to stand for Abingdon, in opposition to a ministerial candidate, saying, "I have made

it my constant rule to resist every application of that kind, when any gentleman entitled to my friendship would have been prejudiced by my compliance," 18 Parl. Hist. 418, n. "The office of steward of the Chiltern Hundreds is an appointment under the hand and seal of the chancellor of the exchequer," Colchester, i. 175.

<sup>2</sup> 8 Park Deb. 4 s. 50; 103 ib. 212.

<sup>3</sup> In answer to a question, Mr. Goschen stated that during the years 1882-1888, on nine occasions the office of the Chiltern Hundreds was granted during a parliamentary recess, 1 Parl. Deb. 4 s. 462.

<sup>4</sup> These offices were also exempted from the provisions of 5 & 6 Geo. V. c. 50 and 6 & 7 Geo. V. c. 56 (see p. 34, n. 7).

<sup>5</sup> The words, "reposing especial trust and confidence in the care and fidelity of," &c., were first omitted in the year 1861.



lodged against his return, in the hope of preventing the treasury from granting him the Chiltern Hundreds. But as his seat was not claimed, he at once received the required appointment; and was returned for East Suffolk, and took his seat again, before a new writ had been issued for Harwich.<sup>1</sup> Again, in February 1865, The O'Donoghue, being member for Tipperary, offered himself as a candidate for Tralee: but before the day of election, he qualified himself to be elected by accepting the Chiltern Hundreds.<sup>2</sup> In 1878, Mr. Wingfield Malcolm, member for Boston, accepted the Chiltern Hundreds, in order to qualify himself as a candidate for the county of Argyll.<sup>3</sup>

In the session of 1847-48, a member having had doubts suggested whether he had not been disqualified at the time of his election, as a contractor (see p. 29), thought it prudent not to take his seat, in case of being sued for the penalties under the Act. He was, however, unwilling to admit his disqualification; and he accordingly applied for the Chiltern Hundreds. Doubts were raised as to the propriety of allowing him to vacate his seat by this method: but it was agreed that, as the time had expired for questioning, by an election petition, the validity of his return, and as the house had no cognizance of his probable disqualification, there could be no objection to his accepting the office.

Chiltern  
Hundreds  
accepted  
by a mem-  
ber dis-  
qualified.

In 1880, Mr. Dodson, elected at the general election in March for the city of Chester, afterwards accepted the office of president of the local government board, and was re-elected without opposition. Meanwhile a petition had been lodged against his first election; and in July the election judges determined that his election was void, on the ground of bribery by his agents. It was generally held that, by virtue of the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), and the Parliamentary Elections Act, 1868, s. 46, he was thenceforth incapable of sitting for Chester in that Parliament. But as his second election had not been questioned, doubts were raised whether he had legally ceased to be a member, and was qualified to sit for another constituency. To remove all doubts upon this question, he accordingly accepted the Chiltern Hundreds, and was elected for Scarborough.

<sup>1</sup> The entry in the votes is as follows: "Sir Fitzroy Kelly, having, since his return for the borough of Harwich, accepted the office of steward of her Majesty's manor of Hempholme, in the county of York, and being returned for

the eastern division of the county of Suffolk, took the oaths and his seat," Votes, sess. 1852, p. 285.

<sup>2</sup> 120 C. J. 4. 50.

<sup>3</sup> 133 C. J. 402.

Unsworn members can avail themselves of these offices;<sup>1</sup> and when Mr. Bradlaugh voted, on the 11th February, 1884, being an unsworn member (see p. 155), the office of the Chiltern Hundreds was granted to him, whereon the new writ was issued to supply the vacancy which by his conduct had taken place.<sup>2</sup>

Corrupt  
practices  
at elec-  
tions.

The penalties inflicted for corrupt practices at elections may have the following effect upon the composition of the House of Commons. A person may, at an election, be disqualified for being elected by reason of corrupt practices committed at an election previous thereto. So also a person not disqualified before an election may, during the election, become disqualified by reason of corrupt practices being committed at such election: but the latter disqualification can only arise *ex post facto* upon an investigation into such election. This disqualification always existed at common law, and the statutory provisions to which reference will be made are "intended only to give fuller effect to the common law of Parliament."<sup>3</sup> Under section 4 of the Corrupt and Illegal Practices Prevention Act, 1883, a candidate for parliamentary election who is reported by an election court as personally guilty of corrupt practices, is incapacitated, during seven years from the date of the report, from being elected for any constituency, and for ever from sitting for the constituency where the corrupt practice took place. Under section 5, a candidate who is reported as guilty by his agent is incapacitated, during seven years from the date of the report, from being elected for the constituency where the corrupt practice took place. Under sections 6 and 38, any person who is convicted on indictment, or who is reported by an election court or by election commissioners to have been guilty of a corrupt practice, is incapacitated for being elected to any constituency, during seven years from the date of conviction, if convicted, or, if reported, from the date of the election. These incapacities are imposed in addition to the election being avoided.<sup>4</sup>

Mode of  
election.

To these explanations concerning the persons of whom Parliament is composed, it is not necessary to add any particulars as to the mode of election; further than that the elections are held by the sheriffs or other returning officers, in obedience to the King's writ out of Chancery,<sup>5</sup> and are determined by the majority of registered

<sup>1</sup> Baron Lionel de Rothschild, 104 C. J. 430; 112 ib. 343.

<sup>2</sup> 139 C. J. 46.

<sup>3</sup> See Rogers on Elections, ii. 34.

<sup>4</sup> Rogers on Elections, ii. 35. For the

proofs of agency in election inquiries and its results, see ib. 413-425.

<sup>5</sup> By 16 & 17 Vict. c. 68, writs are now directed to the returning officers of boroughs instead of to the sheriff of the



electors. By the Ballot Act, 1872 (35 & 36 Vict. c. 33), the public nomination of candidates was discontinued, and the votes of electors are taken by ballot. In the case of a county, the returning officer is to give notice of the day of election within two days after he receives the writ, and in a borough, on the day on which he receives the writ, or the following day. In the case of a county or district borough election, the day of election is to be fixed by the returning officer, not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in a borough, not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the notice and the election.<sup>1</sup> In counties, or district boroughs, the poll is to be taken not less than two, nor more than six clear days after the nomination; and in boroughs, not more than three clear days after the nomination. In reckoning time for all election proceedings, Sunday, Christmas Day, Good Friday and public fast and thanksgiving days are to be excluded.<sup>2</sup>

county. The poll at the Universities is also restricted to five days. By 24 & 25 Vict. c. 53, amended by 31 & 32 Vict. c. 65, voting papers are allowed in University elections. By 16 Vict. c. 15, s. 28, the poll at county elections in England and Wales and Scotland, was reduced to one day. By 25 & 26 Vict. cc. 62 and 92, similar provision was made for Ireland. By the Parliamentary and Municipal Elections Act, 1872, a new form of writ was introduced, and the present mode of conducting elections, and the several duties of returning officers, are prescribed. On the 27th Feb. 1880, a new writ was issued for West Norfolk. On the pre-

vious day, the Queen in Council had pricked the list of sheriffs for the year; and by the post which bore the writ to Norwich, was despatched the warrant to the new sheriff. Meanwhile, however, the outgoing sheriff received the writ and endorsed it, and a question arose whether it should be executed by the outgoing or the incoming sheriff. On reference to the 3 & 4 Will. IV. c. 99, s. 9, it was held that the incoming sheriff should execute the writ, and he was at once sworn in for that purpose.

<sup>1</sup> 35 & 36 Vict. c. 33, 1st Schedule, rules 1. 2.

<sup>2</sup> *Ib.* rule 56.

## CHAPTER II.

## POWER AND JURISDICTION OF PARLIAMENT.

Legisla-  
tive au-  
thority of  
Parlia-  
ment, col-  
lectively.

THE legislative authority of Parliament extends over the United Kingdom, and all its colonies and foreign possessions; and there are no other limits to its power of making laws for the whole empire than those which are incident to all sovereign authority—the willingness of the people to obey, or their power to resist. Unlike the legislatures of many other countries, it is bound by no fundamental charter or constitution: but has itself the sole constitutional right of establishing and altering the laws and government of the empire.

In the ordinary course of government, Parliament does not legislate directly for the over-sea possessions of the Crown; and the introduction of responsible government has necessarily limited the occasions for such legislation. For some of the possessions the king in council legislates, while others like the self-governing dominions have legislatures of their own, which propound laws for their internal government, subject to the approval of the king in council. These laws may afterwards be repealed or amended by statutes of the Imperial Parliament, since the legislatures and laws, alike of the self-governing dominions and the colonies not possessing responsible government, are in theory at any rate both subordinate to the supreme power of the mother country.<sup>1</sup> For example, the constitution of Lower Canada was suspended in 1838; and a provisional government, with legislative functions and great executive powers, was established by the British Parliament.<sup>2</sup> Slavery, also, was abolished by an Act of Parliament, in 1833, throughout all the British possessions, whether governed by local legislatures or

<sup>1</sup> "Parliamentary legislation, on any subject of exclusively internal concern to any British colony, possessing a representative assembly, is, as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception."—Lord Glenelg.

Parl. Pap. (H. C.) sess. 1839, No. 118, p. 7.

<sup>2</sup> 1 & 2 Vict. c. 9; 2 & 3 Vict. c. 53. See also the Parliament of Canada Act, 1875, the Canada Copyright Act, 1875, the British North America Act, 1915, and the British North America Act, 1916, as examples of the interposition of Parliament in colonial legislation.

not : but certain measures for carrying into effect the intentions of Parliament were left for subsequent enactment by the local bodies, or by the queen in council. In 1838, the house of assembly of Jamaica had neglected to pass an effectual law for the regulation of prisons, which became necessary upon the emancipation of the negroes ; when Parliament immediately interposed and passed a statute for that purpose. The assembly, resenting the interference of the mother country, withheld the supplies, and otherwise neglected their functions : but Parliament reduced them to submission by an Act to suspend the colonial constitution, unless within a given time they should resume their duties. And again, in 1866, that ancient constitution was surrendered by acts of the local legislature, confirmed by an Act of the Imperial Parliament. In 1849, the constitutions of the Australian colonies were defined by statute : but the colonial governors and legislative councils were permitted to amend them, with the assent of the queen in council. The vast territories of British India, which had long been subject to the anomalous government of the East India Company, were transferred by statute to the Crown in 1858 and have since been under the immediate legislative authority of Parliament. In 1867, the dominion of Canada was constituted by statute ; and at various dates constitutions were conferred by statute upon some of the Australian colonies and New Zealand. The Commonwealth of Australia was constituted by statute in 1900 and the Union of South Africa in 1909.<sup>1</sup>

There are some subjects upon which Parliament, in familiar language, is said to have no right to legislate : but the constitution has assigned no limits to its authority. A law may be unjust, and contrary to sound principles of government : but Parliament is not controlled in its discretion, and when it errs, its errors can only be corrected by itself. To adopt the words of Sir Edward Coke, the power of Parliament " is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds." <sup>2</sup>

This being the authority of Parliament collectively, the laws and usage of the constitution have assigned peculiar powers, rights and privileges to each of its branches, in connection with their joint legislative functions.

<sup>1</sup> See also Parl. Pap. (H. C.) sess. 1905, No. 142, for the various methods by which representative institutions have

been conferred upon the possessions of the Crown.

<sup>2</sup> 4 Co. Inst. 36.

Prerogatives of the Crown in reference to Parliament.

It is by the act of the Crown alone that Parliament can be assembled. The only occasions on which the Lords and Commons have met by their own authority, were previously to the restoration of King Charles II., and at the Revolution in 1688. The first Act of Charles the Second's reign declared the Lords and Commons to be the two houses of Parliament, notwithstanding the irregular manner in which they had been assembled; and all their Acts were confirmed by the succeeding Parliament summoned by the King, which however qualified the confirmation of them, by declaring that "the manner of the assembling, enforced by the difficulties and exigencies which then lay upon the nation, is not to be drawn into example." In the same manner, the first Act of the reign of William and Mary declared the convention of Lords and Commons to be the two houses of Parliament, as if they had been summoned according to the usual form; and the succeeding Parliament recognized the legality of their Acts.

Annual meeting of Parliament.

Although the king may determine the period for calling Parliaments, his prerogative is restrained within certain limits; as he is bound by statute<sup>1</sup> to issue writs within three years after the determination of a Parliament; while the practice of providing money for the public service by annual enactments, renders it compulsory upon him to meet Parliament every year.

The annual meeting of Parliament, now placed beyond the power of the Crown by a system of finance rather than by distinct enactment, had, in fact, been the law of England from very early times. By the statute 4 Edw. III. c. 14, "it is accorded that Parliament shall be holden every year once, [and] [or] more often if need be." And again, in the 36th Edw. III. c. 10, it was granted "for redress of divers mischiefs and grievances which daily happen [a Parliament shall be holden or] be the Parliament holden *every year*, as another time was ordained by statute."<sup>2</sup>

It is well known that by extending the words, "if need be," to the whole sentence instead of to the last part only, to which they are obviously limited, the kings of England constantly disregarded these laws. It is impossible, however, for any words to be more distinct than those of the 36th Edward III., and it is plain from many records that they were rightly understood at the time. In the 50th Edward III. (1376), the Commons petitioned the king to establish, by

<sup>1</sup> 16 Chas. II. c. 1; and 6 & 7 Will. & Mary, c. 2.

<sup>2</sup> Stat. of the Realm, vol. i. p. 374.

statute, that a Parliament should be held each year; to which the king replied, "In regard to a Parliament each year, there *are* statutes and ordinances made, which should be duly maintained and kept." So also to a similar petition in the 1st Richard II. (1377), it was answered, "So far as relates to the holding of Parliament each year, let the statutes thereupon be kept and observed; and as for the place of meeting, the king will therein do his pleasure." In the following year the king declared that he had summoned Parliament, because at the prayer of the Lords and Commons it had been ordained and agreed that Parliament should be held each year.<sup>1</sup>

In the preamble of the Act 16 Chas. I. c. 1, it was also distinctly affirmed, that "by the laws and statutes of this realm, Parliament ought to be holden at least once every year for the redress of grievances: but the appointment of the time and place of the holding thereof hath always belonged, as it ought, to his majesty and his royal progenitors."<sup>2</sup> Yet by the 16 Chas. II. c. 1, a recognition of these ancient laws was withheld: for the Act of Charles I. was repealed as "derogatory of his majesty's just rights and prerogative;" and the statutes of Edward III. were incorrectly construed to signify no more than that "Parliaments are to be held very often." All these statutes, however, were repealed, by implication, by this Act, and also by the 6 & 7 Will. & Mary, c. 2, which declares and enacts "that from henceforth Parliament shall be holden once in three years, at the least."

The Parliament is summoned by the King's writ or letter issued *Summons*. out of Chancery, by advice of the privy council. By the 7 & 8 Will. III. c. 25, it was required that there shall be forty days<sup>3</sup> between the teste and the return of the writ of summons; and after the union with Scotland this period was extended to fifty days,<sup>4</sup> such being the period assigned in the case of the first Parliament of Great Britain after the Union. But by the Meeting of Parliament Act, 1852 (15 & 16 Vict. c. 23), the time between the proclamation and the meeting of Parliament may be any time not less than thirty-five

<sup>1</sup> By an ordinance in the 5th Edward II. (1312), the object of the law had been more clearly explained; viz. "Que le roi tiegne Parlement une foiz p'an, ou deu foiz si mestier soit." 1 Rot. Parl. 285; 2 ib. 355; 3 ib. 23. 32.

<sup>2</sup> "Act for preventing of inconvenience happening from long intermission of Parliaments."

<sup>3</sup> Forty days were assigned for the period of the summons by the great charter of King John, in which are these words: "Faciemus summoneri . . . ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum."

<sup>4</sup> See 22nd Art. of Union, 6 Ann. c. 11 2 Hatsell, 290.

days ;<sup>1</sup> subject, however, to a prorogation of the meeting of Parliament by proclamation, from the day to which it shall stand summoned to any further day, not being less than fourteen days from the date of the proclamation, under the Act 30 & 31 Vict. c. 81.<sup>2</sup> The writ of summons has always named the day and place of meeting, without which the requisition to meet would be imperfect and nugatory.

Demise of  
the Crown.

The demise of the Crown is the only contingency upon which Parliament is required to meet without summons in the usual form. By the Succession to the Crown Act, 1707, on the demise of the Crown, Parliament, if sitting, is immediately to proceed to act : and, if separated by adjournment or prorogation, is immediately to meet and sit. Before the passing of this Act, Parliament met on a Sunday, 8th March, 1701, on the death of William III. ;<sup>3</sup> and has since met three times, on similar occasions, on Sunday.<sup>4</sup> By the Meeting of Parliament Act, 1797 (37 Geo. III. c. 127), in case of the demise of the Crown after the dissolution or expiration of a Parliament, and before the day appointed by the writs of summons for assembling a new Parliament, the last preceding Parliament is immediately to convene and sit at Westminster, and be a Parliament for six months, subject in the mean time to prorogation or dissolution. In the event of another demise of the Crown during this interval of six months, before the dissolution of the Parliament thus revived, or before the meeting of a new Parliament, it is to convene again and sit immediately, as before, and to be a Parliament for six months from the date of such demise, subject, in the same manner, to be prorogued or dissolved. If the demise of the Crown should occur on the day appointed by the writs of summons for the assembling of a new Parliament, or after that day and before it has met and sat, the new Parliament is immediately to convene and sit, and be a Parliament for six months, as in the preceding cases. This statute, however, needs revision in reference to the provisions of

<sup>1</sup> This period was specially reduced to twenty-eight days by the Registration Act, 1868, s. 11, in regard to the dissolution of 1868, in order to ensure an earlier meeting of the new Parliament.

<sup>2</sup> The power of accelerating the meeting of Parliament for despatch of business by proclamation, given by Statutes 37 Geo. III. c. 127, and 33 & 34 Vict. c. 81 (see p. 50) applies only to a meeting of

Parliament pursuant to a prorogation.

<sup>3</sup> 13 C. J. 782.

<sup>4</sup> Queen Anne, 18 C. J. 3 ; Geo. II., 28 ib. 929. 933 ; Geo. III., 75 ib. 82. 89. For other occasions of the demise of the Crown, see 20 ib. 866 (Geo. I.) ; 85 ib. 589 (Geo. IV.) ; 92 ib. 490 (Will. IV.) ; 156 ib. 5 (Queen Victoria) ; 165 ib. 147 (Edw. VII.).

the Reform Act of 1867 concerning the demise of the Crown (see p. 58).

As the king appoints the time and place of meeting, so also at the commencement of every session he declares to both houses the causes of summons, by a speech delivered to them in the House of Lords by himself in person, or by commissioners appointed by him. Until he has done this, neither house can proceed with any business: but the causes of summons, as declared from the throne, do not bind Parliament to consider them alone, or to proceed at once to the consideration of any of them (see p. 162).

On two occasions, during the illness of George III., the name and authority of the Crown were used for the purpose of opening the Parliament, when the sovereign was personally incapable of exercising his constitutional functions. On the first occasion, Parliament had been prorogued till the 20th November, 1788, then to meet for the despatch of business. When Parliament assembled on that day, the king was under the care of his physicians, and unable to open Parliament, and declare the causes of summons. Both houses, however, proceeded to consider the measures necessary for a regency; and on the 3rd February, 1789, Parliament was opened by a commission, to which the great seal had been affixed by the lord chancellor, without the authority of the king. Again, in 1810, Parliament stood prorogued till the 1st November, and met at a time when the king was incapable of issuing a commission. His illness continued, and on the 15th January, without any personal exercise of authority by the king, Parliament was formally opened, and the causes of summons were declared in virtue of a commission under the great seal, and "in his Majesty's name."<sup>1</sup>

Parliament, it has been seen, can only commence its deliberations at the time appointed by the king; neither can it continue them any longer than he pleases. He may prorogue Parliament by having his command signified, in his presence or by commission, by the lord chancellor or Speaker of the House of Lords, to both houses, or by proclamation. The prorogation of Parliament from the day to which it stood summoned or prorogued to any further day, was effected before 1867 by a writ or commission under the great seal: but by the Prorogation Act, 1867 (30 & 31 Vict. c. 81), Parliament may be prorogued by the royal proclamation alone, except at the close of a session.

<sup>1</sup> For a full statement of these proceedings, see May, Const. Hist. i. 118-144.



Effect of a  
proroga-  
tion.

The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons, and appeals before the House of Lords.<sup>1</sup> Every bill must therefore be renewed after a prorogation, as if it had never been introduced. As it is a rule that a bill of the same substance cannot be passed in either house twice in the same session, a prorogation has been resorted to on three occasions to enable another bill to be brought in (see p. 275).

Meeting of  
Parlia-  
ment ac-  
celerated  
or de-  
ferred by  
proclama-  
tion or  
pursuant  
to Statute.

When Parliament stands prorogued to a certain day, the king may, by the Meeting of Parliament Act, 1797 (37 Geo. III. c. 127) as amended by the Meeting of Parliament Act, 1870 (33 & 34 Vict. c. 81), issue a proclamation, giving notice of his intention that Parliament shall meet for the despatch of business on an earlier day, not less than six days from the date of the proclamation; and Parliament then stands prorogued to that day, notwithstanding the previous prorogation. Pursuant to the first of these Acts, Parliament was assembled in September, 1799;<sup>2</sup> and again on the 12th December, 1854, Parliament then standing prorogued to the 14th; and, in 1857, in consequence of the suspension of the Bank Act of 1844, a proclamation was issued on the 16th November, assembling Parliament on the 3rd December. In 1900 the new Parliament which had been prorogued from the 1st November, the day for which it had been summoned, to the 10th December was summoned to meet for the despatch of business on the 3rd December by a proclamation dated the 26th November.<sup>3</sup> Parliament, notwithstanding a proclamation having been issued for its meeting, can also, under the Prorogation Act, 1867 (30 & 31 Vict. c. 81), and the Meeting of Parliament Act, 1870 (33 & 34 Vict. c. 81), be further prorogued, by proclamation, from the day to which it stands prorogued, to meet for despatch of business upon a further day not less than six days from the date of the proclamation. Thus, Parliament, which stood prorogued to the 30th November, 1878, was further prorogued, on the 27th,

<sup>1</sup> 2 Hatsell, 335. See also statute 45 Geo. III. c. 117, to continue proceedings in the House of Lords against Mr. Justice Fox over the prorogation. By 1 Geo. IV. c. 101, an Indian divorce bill is, in certain cases, excepted from this rule, see Chapter XXX. See also an exception regarding

documents laid before Parliament, p. 568; appeals (House of Lords), p. 56; proceedings in certain cases on private bills p. 759, and on a public bill, p. 276.

<sup>2</sup> 54 C. J. 745; 65 Ib. 3.

<sup>3</sup> 155 C. J. 404.



to the 5th December, on account of the Afghan war, and again, in consequence of a change in the Ministry, from the 18th to the 27th January, 1887, by proclamation dated 31st December, 1886.<sup>1</sup> Other Acts<sup>2</sup> have provided that whenever the Crown shall cause the militia to be embodied, or the army reserve or militia reserve to be called out on permanent service, or the Territorial Force to be embodied, when Parliament stands prorogued or adjourned for more than ten days, the king shall issue a proclamation for the meeting of Parliament within ten days. Accordingly, on the 7th October, 1899, Parliament, which stood prorogued till the 27th October, was summoned by proclamation to meet on the 17th October.<sup>3</sup>

When the king, by the advice of his privy council, has determined upon the prorogation of Parliament, a proclamation is issued, declaring that on a certain day Parliament will be prorogued until a day mentioned; and when it is intended that Parliament shall meet on that day for despatch of business, the proclamation states that Parliament will then "assemble and be holden for the despatch of divers urgent and important affairs." It was formerly customary to give forty days' notice, by proclamation, of a meeting of Parliament for despatch of business: <sup>Meeting for despatch of business.</sup> <sup>4</sup> but under the Meeting of Parliament Acts, 1797 and 1870, Parliament can be assembled for that purpose upon any day not being less than six days from the date of the proclamation. In December, 1877, Parliament having been recently prorogued to Thursday, 17th January (not for despatch of business), a further proclamation was issued on the 22nd December, declaring the royal will and pleasure that Parliament should assemble on the said 17th January for despatch of business.

When Parliament has been dissolved and summoned for a certain day, or when it has been prorogued by commission to a certain day, it meets on that day for despatch of business, if not previously prorogued, without any proclamation for that purpose, the notice of such meeting being comprised in the proclamation relating to the dissolution and the writs then issued, or in the commission for proroguing Parliament respectively.

<sup>1</sup> 142 C. J. 2.

<sup>2</sup> 45 & 46 Vict. c. 48, s. 13, and 1b. c. 49, s. 19; 7 Edw. VII. c. 9, s. 17 (2). For the power of Parliament to present an address to the Crown against the embodiment of the Territorial Force, see *ib.* s. 17 (1).

<sup>3</sup> 154 C. J. 428. See also 47 C. J. 1092

for proclamation under 26 Geo. III. c. 107, s. 97, dated 1st December, 1792, summoning Parliament which stood prorogued till the 3rd January, 1793, to meet on the 13th December, 1792.

<sup>4</sup> 2 Hatsell, 290; 3 Chatham Corr. 126, n.

Adjournment.

Adjournment is solely in the power of each house respectively : though the pleasure of the Crown has occasionally been signified in person, by message, commission, or proclamation, that both houses should adjourn ; and in some cases such adjournments have scarcely differed from prorogations.<sup>1</sup> But although no instance has occurred in which either house has refused to adjourn, the communication might be disregarded. Business has been transacted after the king's desire has been made known ; and the question for adjournment has afterwards been put, in the ordinary manner, and determined after debate, amendment and division.<sup>2</sup> Such interference on the part of the Crown is impolitic, as it may meet with opposition, and unnecessary, as ministers need only assign a sufficient cause for adjournment, when each house could adjourn, of its own accord, and for any period, however extended, which the occasion might require.<sup>3</sup> The pleasure of the Crown was last signified on the 1st March, 1814 ; <sup>4</sup> and it is probable that the practice will not be revived.

A power of interfering with adjournments in certain cases has been conceded to the Crown by statute. The Meeting of Parliament Act, 1799 (39 & 40 Geo. III. c. 14), amended by the Meeting of Parliament Act, 1870, enacts that when both houses of Parliament stand adjourned for more than fourteen days, the king may issue a proclamation, with the advice of his privy council, declaring that the Parliament shall meet on a day not less than six days from the proclamation ; and the houses of Parliament then stand adjourned to the day and place declared in the proclamation ; and all the orders which may have been made by either house, and appointed for the

<sup>1</sup> Adjournment by royal commission ; 1 C. J. 639, Rapin, ii. 205 ; 9 C. J. 158. 423. 426. 427, &c. ; Marvell, i. 337. 343. 346. 356.

<sup>2</sup> 2 Hatsell, 312. 316. 317 ; 1 C. J. 807. 808. 809 ; 10 ib. 694 ; 17 ib. 26. 275. In 1799, 55 ib. 49 ; 34 Parl. Hist. 1196 ; Colchester, i. 192.

<sup>3</sup> In 1785 there was an adjournment from the 2nd August to the 27th October, in order to give time to the Irish Parliament to consider the commercial resolutions, 25 Parl. Hist. 934. In 1799 an adjournment extended from the 12th October to the 21st January ; and in 1813 from the 20th December to the 1st March. In 1820, while the Bill of Pains and Penalties against the Queen was pending in the House of Lords, the Com-

mons adjourned, by four successive adjournments, from the 26th July to the 23rd November, when Parliament was prorogued. On the 18th August, 1882, both houses adjourned until the 24th October, in order to enable the Commons to conclude the consideration of new rules of procedure. On the 22nd September, 1893, the Lords adjourned to the 9th November and the Commons to the 2nd November for the Local Government (England and Wales) Bill, and on the 8th August, 1902, both houses adjourned to the 16th October for the Education (England and Wales) Bill. Similar adjournments have taken place in several subsequent years. • •

<sup>4</sup> 49 L. J. 747, 69 C. J. 132.

original day of meeting, or any subsequent day, stand appointed for the day named in the proclamation.

\*The king may also close the existence of Parliament by a dissolution, but is not entirely free to define the duration of a Parliament. Dissolu-  
tion. Before the Triennial Act, 1694 (6 Will. & Mary, c. 2), there was no constitutional limit to the continuance of a Parliament but the will of the Crown. Under the Septennial Act, 1715 (1 Geo. I. st. 2, c. 38), it ceased to exist after seven years from the day on which, by the writ of summons, it was appointed to meet, a period which was reduced to five years by the Parliament Act, 1911.<sup>1</sup> Before the Revolution of 1688, a Parliament was dissolved by the demise of the Crown: but by the 7 & 8 Will. III. c. 15, and by the Succession to the Crown Act, 1707, a Parliament was determined six months after the demise of the Crown<sup>2</sup> (see p. 48), and so the law continued until, by the Reform Act of 1867, it was provided that the Parliament in being, at any future demise of the Crown, shall not be determined by such demise, but shall continue as long as it would have otherwise continued, unless dissolved by the Crown.<sup>3</sup>

Parliament is usually dissolved by proclamation under the great seal, after having been prorogued to a certain day. This proclamation is issued by the king, with the advice of his privy council; and announces that the king has given order to the lord chancellor of Great Britain and the lord chancellor of Ireland to issue out writs in due form, and according to law, for calling a new Parliament; and that the writs are to be returnable in due course of law.

Since the dissolution of the 28th March, 1681, by Charles II., the sovereign had not dissolved Parliament in person until the 10th June, 1818, when it was dissolved by the Prince Regent in person. Parliament has not since been dissolved in that form: but proceedings not very dissimilar have occurred in recent times. On the 22nd April, 1831, William IV., having come down to prorogue Parliament, said, "I have come to meet you for the purpose of proroguing Parliament, with a view to its *immediate dissolution*;" and Parliament was dissolved by proclamation on the following day. On

<sup>1</sup> The duration of the parliament which began on the 31st January, 1911, was extended to six years and three months by 5 & 6 Geo. V. c. 100, s. 1 (1), and 6 & 7 Geo. V. c. 21, s. 1. See also 6 & 7 Geo. V. c. 44, s. 3 for a conditional imitation of the duration of a parliament.

<sup>2</sup> Even the privy council expired at the demise of the Crown, and its members were reappointed in the new reign, and Queen Anne omitted the names of the Whig chiefs, Somers, Halifax, and Orford. Lord Stanhope, *Reign of Anne*, p. 44.

<sup>3</sup> 30 & 31 Vict. c. 102, s. 51.

the 17th July, 1837, Parliament was prorogued and dissolved on the same day.<sup>1</sup> On the 23rd July, 1847, Queen Victoria, in proroguing Parliament, announced her intention immediately to dissolve it; and it was accordingly dissolved by proclamation on the same day, and the writs were despatched by that evening's post.<sup>2</sup> This course is now the ordinary,<sup>3</sup> but not the invariable,<sup>4</sup> practice.

Assembling of Parliament after dissolution.

Subject to the statutory period of thirty-five days between the proclamation calling a parliament and its meeting (see p. 47), the interval between a dissolution and the assembling of the new Parliament varies according to the season of the year, the state of public business and the political conditions under which an appeal to the people may have become necessary.<sup>5</sup> When the session has been concluded, and no question of ministerial confidence or responsibility is at issue, the recess is generally continued, by prorogations, until the usual time for the meeting of Parliament.

In addition to these several powers of calling a Parliament, appointing its meeting, directing the commencement of its proceedings, determining them from time to time by prorogation, and finally of dissolving it altogether, the Crown has other parliamentary powers, which will hereafter be noticed in treating of the functions of the two houses.

House of Lords.

Peers of the realm enjoy rights and exercise functions in five distinct characters: First, they possess individually, titles of honour which give them rank and precedence; secondly, they are, individually, hereditary counsellors of the Crown; thirdly, they are, collectively, together with the lords spiritual, when not assembled

<sup>1</sup> 73 C. J. 427; 86 ib. 517; 92 ib. 671; 93 ib. 3.

<sup>2</sup> 102 ib. 960; 103 ib. 3.

<sup>3</sup> 21st March, 1857; 23rd April, 1859; 6th July, 1865; 26th January, 1874; 24th March, 1880; 28th June, 1892; 28th November, 1910.

<sup>4</sup> 1859, prorogation, 19th April, proclamation, 23rd April; 1886, prorogation, 25th June, proclamation, 26th June; 1895, prorogation, 6th July, proclamation, 8th July; 1900, prorogation, 8th August, proclamation, 17th September; 1905, prorogation, 11th August, further prorogations, 24th October and 11th December, proclamation, the Government having resigned in the interval, 8th January, 1906; 1909, prorogation, 3rd December, proclamation, 10th January, 1910.

<sup>5</sup> Dissolution.	Meeting.
1807. 27th May	.. 27th Nov.
1818. 10th June	.. 14th Jan.
1826. 2nd June	.. 14th Nov.
1841. 23rd June	.. 19th Aug.
1847. 25th July	.. 18th Nov.
1865. 6th July	.. 1st Feb.
1868. 11th Nov.	.. 10th Dec.
1874. 26th Jan.	.. 5th March.
1880. 24th March	.. 29th April.
1885. 18th Nov.	.. 12th Jan.
1886. 26th June	.. 5th Aug.
1892. 28th June	.. 4th Aug.
1895. 8th July	.. 12th Aug.
1900. 17th Sept.	.. 3rd Dec.
1906. 8th Jan.	.. 13th Feb.
1910. 10th Jan.	.. 15th Feb.
1910. 28th Nov.	.. 31st Jan.

in Parliament, the permanent council of the Crown ; fourthly, they are, collectively, together with the lords spiritual, when assembled in Parliament, a court of judicature ; and lastly, they are, conjointly with the lords spiritual and the Commons, in Parliament assembled, the legislative assembly of the kingdom, by whose advice, consent and authority, with the sanction of the Crown, laws are made.<sup>1</sup>

The most distinguishing characteristic of the Lords is their judicature, of which they exercise several kinds. They have a judicature in the trial of peers (see p. 591) ; and another in claims of peerage and offices of honour, under references from the Crown, but not otherwise.<sup>2</sup> Since the union with Scotland, they have also had a judicature for controverted elections of the sixteen representative peers of Scotland ;<sup>3</sup> and by the act of union with Ireland, all questions touching the rotation or election of lords spiritual or temporal of Ireland were to be decided by the House of Lords :<sup>4</sup> but part of this judicature was superseded in 1869, when Irish bishops ceased to have seats in Parliament. In addition to these special cases, they have a general judicature, as a supreme court of appeal from other courts of justice. This high judicial office has been retained by them as the ancient *concilium regis*, which, assisted by the judges, and with the assent of the king, administered justice in the early periods of English law.<sup>5</sup> Their appellate jurisdiction would also appear to have received statutory confirmation from the Act, 14 Edw. III. c. 5. In the 17th century they assumed a jurisdiction, in many points, which has since been abandoned.<sup>6</sup> They claimed an original jurisdiction in civil causes, which was resisted by the Commons, and has not been enforced for the last century and a half. They claimed an original jurisdiction over crimes, without impeachment by the Commons : but that claim was also abandoned.<sup>7</sup> Their claim to an appellate jurisdiction over causes in equity, on petition to themselves, without reference from the Crown, has been exercised since the reign of Charles I. ; and notwithstanding the resistance of the Commons

Judicature of the Lords.

<sup>1</sup> 1st Rep. Dignity of Peer, 14. Compare, however, p. 2, n. 1.

<sup>2</sup> See Knowles' case, 12 State Tr. 1167-1207 ; 1 Ld. Raym. 10 ; 2 Salk. 509 ; Carth. 297 ; Campbell, Ch. Just. ii. 148 ; Lord Campbell's Speeches, 326 ; but see Debates and Proceedings upon the Wensleydale Life Peerage, 1850, 140 H. D. 3 s. 263, 508, 591, 898, 977, 1022, 1121, 1152, 1289.

<sup>3</sup> Act of the Parl. of Scotland, 5 Ann. c. 8 ; 6 Ann. c. 23 ; 10 & 11 Vict. c. 52.

<sup>4</sup> 4th Art. of Union ; 89 L. J. 289, 295, 329, &c.

<sup>5</sup> Hale, Jurisd. Lords, c. 14 ; Barrington on the Statutes, 244.

<sup>6</sup> See 6 State Tr. 711 ; 4 Parl. Hist. 431, 443 ; 3 Hatsell, 336.

<sup>7</sup> 8 C. J. 38.

in 1675,<sup>1</sup> they have since remained in undisputed possession of it. They had a jurisdiction over causes brought, on writs of error, from the courts of law, originally derived from the Crown, and confirmed by statute,<sup>2</sup> and to hear appeals from courts of equity. In 1873, indeed, their ancient appellate jurisdiction was surrendered by the Judicature Act: but before that Act came into operation this provision was repealed; <sup>3</sup> their jurisdiction was restored and defined, while their efficiency as a court of appeal was increased by the addition of the lords of appeal in ordinary (see p. 12). The power of hearing causes during a prorogation or dissolution of Parliament was also given; and in pursuance of this authority, at the close of each session, the Lords appoint a day irrespective of the session of Parliament, when the house meets for the purpose of hearing appeals, and empowers the appeal committee to meet and choose their own chairman.<sup>4</sup> An appeal now lies to the House of Lords from the Court of Appeal in England, and from any Court in Scotland and Ireland from which a writ of error or appeal previously lay by common law or by statute.<sup>5</sup> But appeals in ecclesiastical, maritime or prize causes, and colonial appeals, both at law and in equity, are determined by the privy council. The powers which are incident to the House of Lords, as a court of record, will claim attention in other places.

A valuable part of the ancient constitution of the *concilium regis* has never been withdrawn from the Lords, viz. the assistance of the judges (see p. 182).

In passing Acts of attainder and of pains and penalties, the judicature of the entire Parliament is exercised (see p. 594); and there is another high parliamentary judicature in which both houses also have a share. In impeachments, the Commons, as a great representative inquest of the nation, first find the crime, and then, as prosecutors, support their charge before the Lords; while the Lords, exercising at once the functions of a high court of justice and of a jury, try and adjudicate upon the charge preferred.

The most important power vested in any branch of the legislature is the right of imposing taxes upon the people and of voting money for the exigencies of the public service. The exercise of this right by the Commons is practically a law for the annual meeting of Parlia-

<sup>1</sup> See 6 State Tr. 1121.

<sup>2</sup> 27 Eliz. c. 8; Sugden, 2.

<sup>3</sup> 37 & 38 Vict. c. 83.

<sup>4</sup> 39 & 40 Vict. c. 59, ss. 8, 9; see also

50 & 51 Vict. c. 70; 119 L. J. 451, &c.

<sup>5</sup> 39 & 40 Vict. c. 59, s. 3; 40 & 41 Vict. c. 57, s. 86.

Judges' opinions.

Acts of attainder and impeachments.

The Commons: their right of voting supplies.

ment for redress of grievances ; and it may also be said to give to the Commons the chief authority in the state. In all countries the public purse is one of the main instruments of political power : but with the complicated relations of finance and public credit in England, the power of giving or withholding the supplies at pleasure, is one of absolute supremacy.

Another important power peculiar to the Commons is that of determining all matters touching the election of their own members. This right had been regularly claimed and exercised since the reign of Queen Elizabeth, and probably in earlier times, although such matters had been ordinarily determined in chancery. Their exclusive right to determine the legality of returns and the conduct of returning officers in making them, was fully recognized in the case of *Barnardiston v. Soame*, by the Court of Exchequer Chamber in 1674, by the House of Lords in 1689,<sup>1</sup> and also by the courts, in the cases of *Onslow* in 1680,<sup>2</sup> and of *Prideaux v. Morris* in 1702.<sup>3</sup> Their jurisdiction in determining the right of election was further acknowledged by the Act 7 and 8 Will. III. c. 7 : but in regard to the rights of electors, a memorable contest arose between the Lords and Commons in 1704. *Ashby*, a burgess of Aylesbury, brought an action at common law against William White and others, the returning officers of that borough, for having refused to permit him to give his vote at an election. A verdict was obtained by him : but it was moved in the Court of Queen's Bench, in arrest of judgment, " that this action did not lie ; " and in opposition to the opinion of Lord Chief Justice Holt, judgment was entered for the defendant, but was afterwards reversed by the House of Lords upon a writ of error.<sup>4</sup> Upon this the Commons declared that the determination of the right of election of members to serve in Parliament is the proper business of the House of Commons ; that they cannot judge of the right of election without determining the right of the electors ; and if electors were at liberty to prosecute suits touching their right of giving voices, in other courts, there might be different judgments, which would make confusion, and be dishonourable to the House of Commons ; and that the action was therefore a breach of privilege. In addition to the ordinary exercise of their jurisdiction, the Commons relied upon the Act 7 and 8 Will. III. c. 7, by which it had been

Right of  
determin-  
ing elec-  
tions.

Case of  
*Ashby v.*  
*White.*

<sup>1</sup> 6 State Tr. 1092. 1119.

<sup>2</sup> 2 Vent. 37, 3 Lev. 39.

<sup>3</sup> 2 Salk. 502, 1 Lut. 82, 7 Mod. Rep. 13.

<sup>4</sup> 1 Smith, L. C. 263.

declared that the last determination of the House of Commons concerning the right of elections was to be pursued. On the other hand, it was objected, in the report of a Lords' Committee, 27th March, 1704, that "there is a great difference between the right of the electors and the right of the elected: the one is a temporary right to a place in Parliament, *pro hac vice*; the other is a freehold, to which a man has a right by common law."<sup>1</sup>

Case of the  
Aylesbury  
men.

Encouraged by the decision of the House of Lords, five other burgesses of Aylesbury, familiarly known as "the Aylesbury men," commenced actions against the constables of their borough, and were committed to Newgate, by the House of Commons, for a contempt of their jurisdiction.<sup>2</sup> The contest that arose hence was closed by the prorogation of Parliament, which put an end also to the imprisonment of the Aylesbury men and their counsel. The plaintiffs, no longer impeded by the interposition of privilege, and supported by the judgment of the House of Lords, obtained verdicts and execution against the returning officers.<sup>3</sup>

Later  
cases.

The question which was agitated at that time has never since brought the Commons into conflict with the courts of law. Complaints, however, have been made to the house, of proceedings in courts of law, having reference to elections; <sup>4</sup> and in 1767, certain electors of the county of Pembroke, having brought actions of trespass on the case against the high sheriff for refusing their votes, were ordered to attend the house: but having discontinued their actions, no further proceedings were taken against them.<sup>5</sup> In 1857, a complaint was made, by petition, that certain voters had brought actions against the returning officer of the borough of Sligo for refusing their votes at the last election: but the committee to whom the matter was referred reported that there were no circumstances affecting the privileges of the house.<sup>6</sup> In 1784, Mr. Fox obtained a verdict, with damages, against the high bailiff of Westminster, for vexatiously withholding his return when he had a majority of votes: and this proceeding, being clearly free from any question of privilege, did not call for the intervention of Parliament.<sup>7</sup> The Commons continued

<sup>1</sup> See all the proceedings collected in Appendix No. 1 to Hatsell, volume 3.

<sup>2</sup> 14 C. J. 444. 445. 552.

<sup>3</sup> 2 Ld. Raym. 1105, 2 Salk. 503.

<sup>4</sup> Rye case, 17th Nov. 1704, 14 C. J. 425; Penryn case, 22nd Feb. 1710, 16 ib. 514 (no further proceedings on these cases).

<sup>5</sup> 31 C. J. 211. 279 293; see also cases of the Mayor of Hastings, Easter Term, 1786, and Pryce v. Belcher, [1847] 4 C. B. 866.

<sup>6</sup> 146 H. D. 3 s. 1557; 112 C. J. 310. 314. 340.

<sup>7</sup> 3 Hughes' Hist. 245.



to exercise (what was not denied to them by the House of Lords) the sole right of determining whether electors had the right to vote, while inquiring into the conflicting claims of candidates for seats in Parliament; until, in 1868, the house delegated its judicature in controverted elections to the courts of law, while retaining its jurisdiction over cases not otherwise provided for by statute.

Although all writs are issued out of chancery, every vacancy after a general election is supplied by the authority of the Commons. During the sitting of the house, vacancies are supplied by warrants issued by the Speaker, by order of the house; and during a recess, after a prorogation or adjournment, the Speaker issues warrants in certain cases (see p. 574).

But notwithstanding their extensive jurisdiction in regard to elections, the Commons have no control over the eligibility of candidates, except in the administration of the laws which define their qualifications. No power exercised by the Commons is more undoubted than that of expelling a member from the house, as a punishment for grave offences; yet expulsion, though it vacates the seat of a member, and a new writ is immediately issued, does not create any disability to serve again in Parliament. John Wilkes was expelled, in 1764, for being the author of a seditious libel. In the next Parliament (3rd February, 1769) he was again expelled for another libel; a new writ was ordered for the county of Middlesex, which he represented, and he was re-elected without a contest; upon which it was resolved, on the 17th February, "that, having been in this session of Parliament expelled this house, he was and is incapable of being elected a member to serve in this present Parliament." <sup>1</sup> The election was declared void: but Mr. Wilkes was again elected, and his election was once more declared void, and another writ issued. A new expedient was now tried: Mr. Luttrell, then a member, accepted the Chiltern Hundreds, and stood against Mr. Wilkes at the election, and, being defeated, petitioned the house against the return of his opponent. The house resolved that, although a majority of the electors had voted for Mr. Wilkes, Mr. Luttrell ought to have been returned, and they amended the return accordingly. Against this proceeding the electors of Middlesex presented a petition, without effect, as the house declared that Mr. Luttrell was duly elected. These proceedings were proved by

New writs  
issued by  
order of  
the House  
of Com-  
mons.

Expulsion  
of mem-  
bers does  
not create  
disability.

<sup>1</sup> 32 C. J. 229.

unanswerable arguments to be illegal; <sup>1</sup> and on the 3rd May, 1782, the resolution of the 17th February, 1769, was ordered to be expunged from the journals, as "subversive of the rights of the whole body of electors of this kingdom." In 1882, Mr. Bradlaugh, having been expelled, was immediately returned by the electors of Northampton; and no question was raised as to the validity of his return.<sup>2</sup>

Disabilities formerly inflicted by the Commons.

To expulsion, in former times, was added occasionally disability of sitting in Parliament or of serving the state. On the 27th May, 1641, Mr. Taylor, a member, was expelled, and adjudged to be for ever incapable of being a member of the house.<sup>3</sup> During the Long Parliament, incapacity for serving in the Parliament then assembled was frequently part of the sentence of expulsion. On the Restoration, in 1660, the house went so far as to expel Mr. Wallop, and resolve him to be "made incapable of bearing any office or place of public trust in this kingdom." In 1712, Mr. Robert Walpole, on being re-elected after his expulsion, was declared incapable of serving in the present Parliament, having been expelled for an offence.<sup>4</sup> But these cases can only be regarded as examples of an excess of their jurisdiction by the Commons; for one house of Parliament cannot create a disability unknown to the law.

Suspension of members.

The suspension of members from the service of the house is another form of punishment. On the 27th April, 1641, Mr. Gervaise Hollis, a member, was suspended the house during the session.<sup>5</sup> On the 6th November, 1643, Sir Norton Knatchbull was suspended the house during the pleasure of the house.<sup>6</sup> During nearly two centuries this form of punishment was left in abeyance, no case of suspension having occurred between 1692 and recent times. On the 25th July, 1877, it was laid down from the chair that any member guilty of a contempt "would be liable to such punishment, whether by censure, by suspension from the service of the house, or by commitment, as the house may adjudge."<sup>7</sup> By standing order No. 18 suspension is adopted for the punishment of offences such as disregard of the authority of the chair, or obstruction, and has been imposed in numerous cases.

<sup>1</sup> See particularly the speech of Mr. Wedderburn, 1 Cav. Deb. 352. See also May, Const. Hist. i. 310-326.

<sup>2</sup> 38 C. J. 977; 137 ib. 62.

<sup>3</sup> 2 C. J. 158; also Mr. Benson, ib. 301; and Mr. Trelawny, ib. 473.

<sup>4</sup> 8 ib. 60; 17 ib. 128.

<sup>5</sup> 2 ib. 128.

<sup>6</sup> 3 ib. 302; also the cases of Mr. Frye, 6 ib. 123; Mr. Love, 8 ib. 289; Sir G. Carteret, 9 ib. 120; Sir J. Prettiman, 9 ib. 156; Mr. Cullingford, 10 ib. 846.

<sup>7</sup> 132 ib. 375.

Expulsion is generally reserved for offences which render members unfit for a seat in Parliament, and which, if not so punished, would bring discredit upon Parliament. Members have been expelled, as being in open rebellion; <sup>1</sup> as having been guilty of forgery; <sup>2</sup> of perjury; <sup>3</sup> of frauds and breaches of trust; <sup>4</sup> of misappropriation of public money; <sup>5</sup> of conspiracy to defraud; <sup>6</sup> of corruption in the administration of justice, <sup>7</sup> or in public offices, <sup>8</sup> or in the execution of their duties as members of the house; <sup>9</sup> of conduct unbecoming the character of an officer and a gentleman; <sup>10</sup> and of contempts, libels and other offences committed against the house itself. <sup>11</sup>

Grounds of expulsion.

Where members have been legally convicted of any offences, it is customary to lay the record of conviction before the house. <sup>12</sup> In other cases the proceedings have been founded upon reports of commissions, or committees of the house or other sufficient evidence. <sup>13</sup> And it is customary to order the member, if absent, to attend in his place, before an order is made for his expulsion. Service is made upon him of the order of the house for his attendance; or evidence is furnished proving that service is impossible. Lord Cochrane, imprisoned in the King's Bench for conspiracy to defraud (see p. 113), was brought to the bar by the marshal of the prison in deference to the order of the house. Lord Cochrane was desired by the Speaker to take his place, whence he addressed the house in support of his innocence. In the cases of Mr. Verney and Mr. Hastings, lying in prison under sentence for their offences, a communication was made, through the Home Office, of the order for their attendance, and of the intended motion for their expulsion. <sup>14</sup>

Evidence of offences.

Members have also been expelled who have fled from justice.

<sup>1</sup> Mr. Foster and Mr. Carnegie, 1715, 18 C. J. 336. 467.

<sup>2</sup> Mr. Ward, 1726, 20 ib. 702.

<sup>3</sup> Mr. Atkinson, 1783, 39 ib. 770.

<sup>4</sup> South Sea Directors, 1720, 19 ib. 406. 412. 413; Commissioners of Forfeited Estates, 1732, 21 ib. 871; Benjamin Walsh, 1812, 67 ib. 176, Colchester, ii. 373; Mr. Hastings, 1892, 147 C. J. 120.

<sup>5</sup> Earl of Ranelagh, 1702, 14 ib. 171; Mr. Hunt, 1810, 65 ib. 398.

<sup>6</sup> Lord Cochrane and Mr. Cochrane Johnstone, 1814, 69 ib. 433.

<sup>7</sup> Sir J. Bennet, 1621, 1 ib. 588.

<sup>8</sup> Mr. Walpole and Mr. Carbonell, 1711, 17 ib. 30. 97.

<sup>9</sup> Mr. Ashburnham, 1667, 9 ib. 24; Sir

J. Trevor (Speaker), 1694, 11 ib. 274, 5 Parl. Hist. 900-910; Mr. Hungerford, 1695, 11 C. J. 283.

<sup>10</sup> Col. Cawthorne, 1796, 51 ib. 661; Mr. Verney, 1891, 146 ib. 268. 272. 282.

<sup>11</sup> 1 ib. 917; 2 ib. 301. 537; 9 ib. 431; 17 ib. 513; 18 ib. 411; 20 ib. 391; 137 ib. 61. See also Report of Precedents, Parl. Pap. (H. C.) sess. 1806-7, No. 79.

<sup>12</sup> 39 C. J. 770; 67 ib. 176; 69 ib. 433.

<sup>13</sup> 11 ib. 283; 20 ib. 141. 391; 21 ib. 870; 65 ib. 433, &c.

<sup>14</sup> 51 ib. 661; 65 ib. 399; 67 ib. 176; 69 ib. 433; 111 ib. 367. See Mr. Speaker's remarks (Mr. Verney's case), 12th May, 1891, 353 H. D. 3 s. 574.

without any conviction or judgment of outlawry. On the 18th July, 1856, a true bill was found against James Sadleir for fraud, and a warrant was then issued for his apprehension. On the 24th, a motion was made for his expulsion, on the ground of his having absconded, which, being considered premature, the house refused to entertain. But on the 16th February, 1857, when the reports of the Crown solicitor and officers of the constabulary, showing the measures which had since been ineffectually taken to apprehend Mr. Sadleir and bring him to trial, had been laid before the house, he was expelled, as having fled from justice.<sup>1</sup>

<sup>1</sup> 143 H. D. 3 s. 1386; 144 ib. 702; ib. 456. 469; 147 ib. 67.  
111 C. J. 379; 112 ib. 48. See also 146

## CHAPTER III.

## GENERAL VIEW OF THE PRIVILEGE OF PARLIAMENT.

Both houses of Parliament enjoy various privileges in their collective capacity, as constituent parts of the High Court of Parliament; which are necessary for the support of their authority and for the proper exercise of the functions entrusted to them by the constitution. Other privileges, again, are enjoyed by individual members, which protect their persons and secure their independence and dignity.

Privileges enjoyed by the law and custom of Parliament and by statute.

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone all privileges whatever are founded. The Lords have ever enjoyed them, simply because "they have place and voice in Parliament:"<sup>1</sup> but a practice has obtained with the Commons, that would appear to submit their privileges to the royal favour. At the commencement of every Parliament since the 6th Henry VIII., it has been the custom for the Speaker,

"In the name, and on behalf of the Commons, to lay claim by humble petition to their ancient and undoubted<sup>2</sup> rights and privileges; particularly that their persons [their estates and servants<sup>3</sup>] may be free from arrests and all molestations; that they may enjoy liberty of speech in all their debates; may have access to his Majesty's royal person whenever occasion shall require; and that all their proceedings may receive from his Majesty the most favourable construction."

Speaker's petition.

To which the lord chancellor replies that

"His Majesty most readily *confirms* all the rights and privileges which have ever been granted to or conferred upon the Commons, by his Majesty or any of his royal predecessors."<sup>4</sup>

<sup>1</sup> Hakewel, 82.

<sup>2</sup> See the protestations of the Commons, in answer to James I., who took offence at the Speaker's prayer for their privileges as "their antient and undoubted right and inheritance," 5 Parl. Hist. 512; 2 Proceedings of the Commons, 1620-1, 359.

<sup>3</sup> The claim of privilege in respect of their estates was omitted for the first time on the 5th Nov. 1852. The claim for

servants was retained until the 5th Aug. 1892, when the claim was omitted, their privileges being wholly abolished (see p. 106), 7 Parl. Deb. 4 s. 18. The officers of the house are still privileged, within its precincts, 2 Hatsell, 225; Colchester, i. 65.

<sup>4</sup> 73 L. J. 571; 80 ib. 8, &c. For the form of words used at the opening of the first new parliament after an accession to the throne, see 138 L. J. 18; 143 ib. 9.

The authority of the Crown in regard to the privileges of the Commons, is further acknowledged by the report of the Speaker to the house, that their privileges have been confirmed in as full and ample a manner as they have been heretofore *granted* or *allowed* by his Majesty or any of his royal predecessors.<sup>1</sup>

This custom probably originated in the ancient practice of confirming laws in Parliament, that were already in force, by petitions from the Commons, to which the assent of the king was given, with the advice and consent of the Lords.<sup>2</sup>

But whatever may have been the origin and cause of this custom, and however great the concession to the Crown may appear, the privileges of the Commons are nevertheless independent of the Crown, and are enjoyed irrespectively of their petition. Some have been confirmed by statute, and are, therefore, beyond the control either of the Crown or of any other power but Parliament; while others, having been limited or even abolished by statute, cannot be granted or allowed by the Crown.

Every privilege will be separately treated, beginning with such as are enjoyed by each house collectively, and proceeding thence to such as attach to individual members: but, before these are explained, two of the points enumerated in the Speaker's petition may be disposed of, as being matters of courtesy rather than privilege. The first of these is for freedom of access to his Majesty, and the second "that their proceedings may receive a favourable construction."

The first request, for freedom of access to the sovereign, is recorded in the 28th Henry VIII. (1536); "but," says Elsyng, "it appeareth plainly they ever enjoyed this, even when the kings were absent from Parliament;" and in the "times of Richard II., Henry IV., and downwards, the Commons, with the Speaker, were ever admitted to the king's presence in Parliament to deliver their answers; and oftentimes, under Richard II., Henry IV., and Henry VI., they did propound matters to the king which were not given them in charge to treat of."<sup>3</sup> The privilege of access is not enjoyed by individual members of the House of Commons, but by the house at large, with their Speaker; and the only occasion on which it is exercised is when an address is presented to the king by the whole

<sup>1</sup> 112 C. J. 119, &c.

<sup>2</sup> See statement in the Commons' petition, 17th Edward IV. (1477), Atwyll's case (p. 103), that their liberties and fran-

chises had been confirmed to them by the royal authority, 6 Rot. Parl. 191.

<sup>3</sup> Elsyng, 175. 176.

house. Without this privilege it is undeniable that the king might refuse to receive such an address presented in that manner; and that, so far as the attendance of the whole house may give effect to an address, it is a valuable privilege. Addresses of the house may also be communicated to the sovereign by any members who have access to him as privy councillors or as members of his Majesty's household.

The only right claimed and exercised by individual members, in availing themselves of the privilege of access to the king, is that of accompanying the Speaker with addresses, and entering the presence of royalty, in their ordinary attire. Such a practice is, perhaps, scarcely worthy of notice, but it is probably founded upon the concession to the House of Commons of a free access to the throne which may be supposed to entitle them, as members, to dispense with the forms and ceremonies of the court.

Far different is the privilege enjoyed by the House of Peers. Not only is that house, as a body, entitled to free access to the throne, but each peer, as one of the hereditary counsellors of the Crown, is individually privileged to have an audience of the king (see p. 54).

The understanding that all the proceedings of the Commons will receive from the king the most favourable construction, is conducive to that cordial co-operation of the several branches of the legislature which is essential to order and good government: but it cannot be classed among the privileges of Parliament. It is not a constitutional right, but a personal courtesy; as the proceedings of the house are guarded against any interference, on the part of the Crown, not authorized by the laws and constitution of the country. The occasions for this courtesy are also limited; as by the law and custom of Parliament the king cannot take notice of anything said or done in the house, but by the report of the house itself (see p. 292).

Each house, as a constituent part of Parliament, exercises its own privileges independently of the other. They are enjoyed, however, not by any separate right peculiar to each, but solely by virtue of the law and custom of Parliament. There are rights or powers peculiar to each, as explained in the last chapter: but all privileges, properly so called, appertain equally to both houses. These are declared and expounded by each house; and breaches of privilege are adjudged and censured by each: but still it is the law of Parliament that is thus administered.

The law of Parliament is thus defined by two eminent authorities: Law and custom of Parliament.  
 "As every court of justice hath laws and customs for its direction, some  
 P. F. ment.

the civil and canon, some the common law, others their own peculiar laws and customs, so the High Court of Parliament hath also its own peculiar law, called the *lex et consuetudo Parliamenti*." This law of Parliament is admitted to be part of the unwritten law of the land, and as such is only to be collected, according to the words of Sir Edward Coke, "out of the rolls of Parliament and other records, and by precedents and continued experience;" to which it is added, that "whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere."<sup>1</sup>

Hence it follows that whatever the Parliament has constantly declared to be a privilege, is the sole evidence of its being part of the ancient law of Parliament. "The only method," says Blackstone, "of proving that this or that maxim is a rule of the common-law, is by showing that it hath always been the custom to observe it;" and "it is laid down as a general rule that the decisions of courts of justice are the evidence of what is common law."<sup>2</sup> The same rule is strictly applicable to matters of privilege, and to the expounding of the unwritten law of Parliament.

New privileges may not be created.

But although either house may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created. In 1704, the Lords communicated a resolution to the Commons at a conference, "That neither house of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament;" which was assented to by the Commons.<sup>3</sup>

Breach of privilege a contempt of the High Court of Parliament.

Both houses act upon precisely the same grounds in matters of privilege. They declare what cases, by the law and custom of Parliament, are breaches of privilege; and punish the offenders by censure or commitment, in the same manner as courts of justice punish for contempt.<sup>4</sup> The modes of punishment may occasionally differ, in some respects, in consequence of the different powers of the two houses: but the principle upon which the offence is determined, and the dignity of Parliament vindicated, is the same in both houses.

Commitment.

The right to commit for contempt, though universally acknowledged to belong to both houses, has been regarded with jealousy. But whilst the particular acts of both houses should, undoubtedly, be

<sup>1</sup> 1 Bl. Com. 163, 4 Co. Inst. 15. 50.

<sup>2</sup> 1 Bl. Com. 68. 71.

<sup>3</sup> 14 C. J. 555. 560.

<sup>4</sup> 8 Grey, Deb. 232.



watched with vigilance when they appear to be capricious or unjust, it is unreasonable to cavil at privileges which are established by law and custom, and are essential to the dignity and power of Parliament.<sup>1</sup>

The power of the House of Lords to commit for contempt was questioned in the cases of the Earl of Shaftesbury,<sup>2</sup> in 1675, and of Flower,<sup>3</sup> in 1779: but was admitted without hesitation by the Court of King's Bench.

The power of commitment by the Commons is established upon the ground and evidence of immemorial usage.<sup>4</sup> It was distinctly admitted by the Lords, at the conference between the two houses, in the case of Ashby and White, in 1704,<sup>5</sup> and it has been repeatedly recognized by the courts of law.<sup>6</sup> The power is also virtually admitted by the statute 1 Jas. I. c. 13, s. 3, which provides that nothing therein shall "extend to the diminishing of any punishment to be hereafter, by censure in Parliament, inflicted upon any person."

The house has also the power to send for persons whose conduct has been brought before the house on a matter of privilege by an order for their attendance, without specifying in the order the object or the causes whereon their attendance is required; <sup>7</sup> and in obedience to the order members attend in their places, and other persons at the bar (see p. 90).<sup>8</sup>

The right of compelling the attendance of persons before Parliament and of commitment being admitted, it becomes an important question to determine what authority and protection are acquired by officers of either house, in executing the orders of their respective houses.

Resistance to the Serjeant-at-arms, or his officers, or others acting

By the  
Lords.  
  
By the  
Commons.  
  
Power to  
order at-  
tendance.

Authority  
and pro-  
tection of  
officers in  
executing  
orders of  
either  
house.

<sup>1</sup> For the exercise of the right of commitment by the House of Representatives, United States, though the right is not embodied in the constitution, see House Manual and Digest (House of Representatives, United States), sec. 277, *et seq.*, 1 Story, 583.

<sup>2</sup> 6 State Tr. 1269, *et seq.*

<sup>3</sup> 8 Term Rep. 314.

<sup>4</sup> Nearly 1000 instances of its exercise occurred between 1547 and the first half of the nineteenth century. Mr. Wynn's Treatise, p. 7.

<sup>5</sup> 17 L. J. 714.

<sup>6</sup> The Aylesbury case, *Queen v. Paty* (1704), 2 Ld. Raym. 1105; *Murray's case* (1751), 1 Wils. 299; *Crosby's* (1771), 3

ib. 188, 19 State Tr. 1137; *Burdett v. Abbott* (1811), 14 East, 1; *Mr. Hobhouse's case* (1820), 2 Chit. 207, 3 B. & Ald. 420; *Sheriff of Middlesex* (1840), 11 Ad. & El. 273; *Howard's case*, Select Committee on Printed Papers, 2nd Report, Parl. Pap. (H. C.) sess. 1845, Nos. 305, 397; ib. sess. 1847, No. 39.

<sup>7</sup> See 2 Cav. Deb. 321 (21st Feb. 1771), for the Speaker's suggestion that service of the order of the house by leaving a copy thereof at the usual place of abode of the person therein named should be deemed personal service.

<sup>8</sup> 147 C. J. 157, 3 Parl. Deb. 4 s. 700; 152 C. J. 361; 156 ib. 414.

in execution of the orders of either house, has always been treated and punished as a contempt.

**Lords.** The Lords will not suffer any persons, whether officers of the house or others, to be molested for executing their orders, or the orders of a committee,<sup>1</sup> and will protect them from actions.

The house was informed, 28th November, 1768, that an action had been commenced against Mr. Hesse, a justice of the peace for Westminster, who had acted under the orders of the house in suppressing a riot at the doors of the house, in Palace-yard; and Biggs, the plaintiff, and Aylett, his attorney, were ordered to attend, and were imprisoned.<sup>2</sup>

On the complaint of Aldern, a constable, 26th June, 1788, that having, under an order of the house, refused Mr. Hyde admittance to Westminster Hall during the trial of Warren Hastings, he had been indicted for an assault, Mr. Hyde was ordered to attend, and committed.<sup>3</sup> The last case of the kind was that commonly known as "the umbrella case," when, 26th March, 1827, John Bell was summoned before the Lords and admonished, because he had served F. Plass, a doorkeeper, when attending on the house, with a process from the Westminster Court of Requests, to pay a debt and costs awarded against him by that court, for the loss of an umbrella which was left with the doorkeeper during a debate.<sup>4</sup>

**Commons.** In the case of Ferrers, in 1543, the Commons committed the sheriffs of London to the Tower, for having resisted their Serjeant-at-arms, with his mace, while freeing a member who had been imprisoned in the Compter.<sup>5</sup>

In 1689, after a dissolution of Parliament, an action was brought against Topham, the Serjeant-at-arms attending the Commons, for executing the orders of the house in arresting certain persons. Topham pleaded to the jurisdiction of the court, but his plea was overruled, and judgment was given against him. The house declared this to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, who had been the judges in the case, to the custody of the Serjeant-at-arms.<sup>6</sup>

In 1771, the House of Commons ordered Miller, a printer concerned in publishing the debates, to be taken into custody; and he was

<sup>1</sup> 13 L. J. 104. 412; 15 ib. 565; 21 ib. 190; 38 ib. 649; 45 ib. 340. 610.

<sup>2</sup> 32 L. J. 187. 197.

<sup>3</sup> 38 L. J. 249. 250. 251.

<sup>4</sup> 59 L. J. 199. 206.

<sup>5</sup> 1 Hatsell, 53.

<sup>6</sup> 10 C. J. 227.

arrested by a messenger, under the Speaker's warrant. The messenger was brought before the Lord Mayor's court, who set the prisoner at liberty, and committed the messenger of the house for an assault. For this resistance to the orders of the house, Mr. Alderman Oliver and the lord mayor (Brass Crosby) were committed to the Tower.<sup>1</sup>

When the house has ordered the Serjeant to execute a warrant, the house sustains his authority, and punishes those who resist him.<sup>2</sup> But a question arises concerning the authority with which the Serjeant is invested by law, when executing a warrant authorized by the order of the house, and the assistance he can demand from the civil power. Both houses consider every branch of the civil government as bound to assist, when required, in executing their warrants and orders, and have repeatedly required such assistance.

In 1640, all mayors, justices, &c., in England and Ireland were ordered by the Commons to aid in the apprehension of Sir G. Ratcliffe.<sup>3</sup> In 1660, the Serjeant was expressly empowered "*to break open a house* in case of resistance, and to call to his assistance the sheriff of Middlesex, and all other officers, as he shall see cause; and who are required to assist him accordingly." On the 23rd October, 1690, the Lords authorized Black Rod to break open the doors of any house, in the presence of a constable, and there search for and seize Lord Keverton.<sup>4</sup>

On the 24th January, 1670, and again on the 5th April, 1679, the House of Commons directed, by resolution, that the Speaker should issue warrants requiring sheriffs, bailiffs, constables and all other his Majesty's officers and subjects, to aid and assist the Serjeant-at-arms in his execution of the orders of the house.<sup>5</sup> The Lords also have frequently required the assistance of the civil power in a similar manner.<sup>6</sup> At the present time, by the Speaker's warrant to the Serjeant-at-arms, for taking a person into custody, "all mayors, sheriffs, under-sheriffs, bailiffs, constables, headboroughs, and officers of the house are required to be aiding and assisting in the execution thereof." Before the year 1810, however, no case arose in which the legal consequences of a Speaker's warrant, and the power

Assistance  
of the civil  
power.

<sup>1</sup> 33 C. J. 263. 285. 289. Report of Committee, 1771; see also May, Const. Hist. i. 337.

<sup>2</sup> 9 C. J. 341; 13 ib. 825.

<sup>3</sup> 2 C. J. 29.

<sup>4</sup> 8 C. J. 222; 14 L. J. 530.

<sup>5</sup> 8 C. J. 586; 9 ib. 193; see also 2 ib. 371; 9 ib. 353. 587.

<sup>6</sup> 21st Dec. 1678, 13 L. J. 429; 21st and 23rd Oct. 1690, 4 ib. 527. 530; 21st May, 1747, 27 ib. 118.

of the Serjeant-at-arms in the execution of it, were distinctly explained and recognized by a legal tribunal, as well as by the judgment of Parliament, in punishing resistance.

Breaking  
open outer  
doors.

In the case of Sir Francis Burdett, in 1810, a doubt arose concerning the power of the Serjeant-at-arms to break into the dwelling-house of a person against whom a Speaker's warrant had been issued. The Serjeant-at-arms, when upon the execution of a warrant, was turned out of Sir Francis Burdett's private dwelling-house by force. The opinion of the attorney-general was consequently required to determine whether the Serjeant was

"justified in breaking open the outer or any inner door of the private dwelling-house of Sir F. Burdett, or of any person in which there is reasonable cause to suspect he is concealed, for the purpose of apprehending him; whether the Serjeant might take to his assistance a sufficient civil or military force for that purpose, such force acting under the direction of a civil magistrate; and whether such proceedings would be justifiable during the night as well as in the day-time."<sup>1</sup>

The attorney-general answered all these questions, except the last, in the affirmative; and acting upon his opinion, the Serjeant-at-arms forced an entrance into Sir Francis Burdett's house, down the area, and conveyed his prisoner to the Tower, with the assistance of a military force. Sir Francis Burdett brought actions against the Speaker and Serjeant-at-arms, in the Court of King's Bench and verdicts were obtained for the defendants. The opinion of the attorney-general, upon which the Serjeant had acted, was thus confirmed.<sup>2</sup> This judgment was affirmed, on a writ of error, by the Exchequer Chamber, and ultimately by the House of Lords.<sup>3</sup>

Although the Serjeant-at-arms may force an entrance, it was established by the action brought by Mr. Howard, in 1842, that the Serjeant or his messengers are not authorized to remain in the house, if they know that the person to be arrested is from home, in order to await his return.<sup>4</sup>

Protection  
to officers  
in execution  
of  
warrants.

If the officer should not exceed his authority, he will be protected by the courts, even if the warrant should not be technically formal, according to the rules by which the warrants of inferior courts are tested. In 1843, Mr. Howard commenced another action of trespass

<sup>1</sup> 65 C. J. 264, Annual Register, 1810, p. 344, &c., 16 H. D. 1 s. 257. 454. 915, &c., Colchester, ii. 245. 263, &c.

<sup>2</sup> See Lord Ellenborough's opinion, in *Burdett v. Abbot* (1811), 14 East, at p.

157.

<sup>3</sup> 4 Taunt. 401; 5 Dow, 165.

<sup>4</sup> *Howard v. Gossét* (1842), Car. & M. 382.

against Sir W. Gosset, the Serjeant-at-arms, and the Court of Queen's Bench gave judgment for the plaintiff, on the ground that the warrant was technically informal, and did not justify the acts of the Serjeant. This judgment was reversed by the Court of Exchequer Chamber, by whom the privileges of Parliament were thus expounded: "They construe the warrant as they would that of a magistrate; we construe it as a writ from a superior court; the authorities relied upon by them relate to the warrants and commitments of magistrates; they do not apply to the writs and mandates of superior courts, still less to those of either branch of the High Court of Parliament." Writs issued by a superior court, not appearing to be out of the scope of their jurisdiction, are valid of themselves, without any further allegation, and a protection to all officers and others in their aid, acting under them; and that, although on the face of them they be irregular.<sup>1</sup> This principle was extended, by the decision of the lord chief baron, in the action brought in 1852 by Mr. Lines against Lord Charles Russell, the Serjeant-at-arms, who, authorized by a warrant issued by the chairman of a committee under the Election Petitions Act, 1848 (11 & 12 Vict. c. 98), had taken Mr. Lines into custody for misbehaviour in giving evidence before the committee.<sup>2</sup>

The power of commitment, with all the authority which can be given by law, being thus established, becomes the key-stone of parliamentary privilege. Either house may adjudge that any act is a breach of privilege and contempt; and if the warrant recites that the person to be arrested has been guilty of a breach of privilege, the courts of law cannot inquire into the grounds of the judgment, but must leave him to suffer the punishment awarded by the High Court of Parliament, by which he stands committed.

Causes of commitment cannot be inquired into by the courts of law.

The Habeas Corpus Act<sup>3</sup> is binding upon all persons whatever, who have prisoners in their custody; and it is therefore competent for the judges to have before them persons committed by either House of Parliament for contempt; and it is the practice for the Serjeant-at-arms and others, by order of the house, to make returns to writs of habeas corpus.<sup>4</sup>

Habeas Corpus.

<sup>1</sup> Howard v. Gosset (1845), 10 Q. B. 359; shorthand writer's notes, as printed by the House of Commons, Parl. Pap. (H. C.) sess. 1845, No. 39, pp. 166. 168.

<sup>2</sup> Shorthand writer's notes, 25th June, 3rd and 13th Nov. 1852; Lines v. Russell (1852), 16 J. P. 491, 19 L. T. (o.s.) 364,

106 C. J. 147. 148. 153, 107 ib. 64. 68; see also the decisions of the judges in the case of the Queen v. Paty (1704); 2 Ld. Raym. at 1109; Salk. 503.

<sup>3</sup> 31 Car. II. c. 2.

<sup>4</sup> Sheriff of Middlesex, 95 C. J. 25, 51 H. D. 3 s. 550; Lines's case, 106 C. J. 147.

Prisoners  
cannot be  
bailed.

Although the return is made according to law, the parties who stand committed for contempt cannot be admitted to bail, or the causes of commitment be inquired into, by the courts of law. It had been so adjudged by the courts, during the Commonwealth, in the cases of Captain Streater and Sir Robert Pye.<sup>1</sup> The same opinion was expressed in Sheridan's case, by many of the first lawyers in the House of Commons, shortly after the passing of the Habeas Corpus Act; and it has been confirmed by resolutions of the House of Commons,<sup>2</sup> and by numerous subsequent decisions of the courts of law, given on applications for the release, or for the discharge on bail, of persons committed by the Houses of Lords and Commons.<sup>3</sup>

Parliament  
claims the  
same  
power as  
the courts.

It may be considered, accordingly, as established, beyond all question, that the causes of commitment by either house of Parliament, for breaches of privilege and contempt, cannot be inquired into by courts of law: but that their "adjudication is a conviction, and their commitment, in consequence, an execution." No other rule could be adopted consistently with the independence of either house of Parliament; nor is the power thus claimed by Parliament greater than the power conceded by the courts to one another.<sup>4</sup>

Commitment  
for  
offences  
beyond  
the jurisdiction  
of the house.

One qualification of this doctrine, however, must not be omitted. When it appears, upon the return of the writ, simply that the party has been committed for a contempt and breach of privilege, it has been universally admitted that it is incompetent for the courts to inquire further into the nature of the contempt: but if the causes of commitment were stated on the warrant, and appeared to be beyond the jurisdiction of the house, it is probable, judging by the opinion expressed by Lord Ellenborough, in *Burdett v. Abbot*,<sup>5</sup> and by Lord Denman in the case of the sheriff of Middlesex, that their sufficiency would be examined.

148. 153. In 1675 and 1704, the Commons endeavoured to resist the operation of a writ of habeas corpus by orders to the lieutenant of the Tower and to the Serjeant-at-arms, to make no return thereof, 9 ib. 356; 14 ib. 565.

<sup>1</sup> 2 C. J. 960; 5 ib. 221; 5 State Tr. 365. 948; Sty. 415.

<sup>2</sup> 1680, 4 Parl. Hist. 1262; 9 C. J. 356. 357; 12 ib. 174; 14 ib. 565. 599.

<sup>3</sup> Lord Shaftesbury's case, 6 State Tr. 1269; 1 Freem. 153; 1 Mod. Rep. 144; 3 Keb. 792; *Queen v. Paty* (1704), 2 Ld. Raym. 1105; Mr. Murray's case (1751), 1 Wils. 200; Brass Crosby's case (1771),

19 State Tr. 1137, 3 Wils. 188; Flower's case (1799), 8 Term Rep. 314; Hobhouse's case (1820), 2 Chit. 207, 3 B. & Ald. 420; Sheriff of Middlesex (1840), 95 C. J. 25, 11 Ad. & El. 273; case of W. Lines (1852), 106 C. J. 147. 148. 153, 107 ib. 64. 68, 16 J. P. 491, 19 L. T. (o.s.) 364.

<sup>4</sup> See the decision of the Court of Common Pleas, 18th Nov. 1845, in the case of William Cobbett, detained under a writ of attachment issued by the Court of Chancery: and also *In re W. Dimes* (1850), 14 Jur. 198.

<sup>5</sup> 14 East, 1.

The same principle may be collected from the judgment of the Exchequer Chamber in *Gosset v. Howard*, where it is said, "It is presumed, with respect to such writs as are actually issued by superior courts, that they are duly issued, and in a case in which they have jurisdiction, *unless the contrary appear on the face of them.*"

But it is not necessary that any cause of commitment should appear upon the warrant, or that the prisoner should have been adjudged guilty of contempt.<sup>1</sup> It has been a very ancient practice in both houses to send for persons in custody to answer charges of contempt;<sup>2</sup> and in the Lords, to order them to be attached and brought before the house to answer complaints of breaches of privilege, contempts and other offences.<sup>3</sup> This practice is analogous to writs of attachment upon mesne process in the superior courts, and is unquestionably legal.

Persons  
sent for in  
custody.

In earlier times it was not the custom to prepare a formal warrant for executing the orders of the House of Commons: but the Serjeant arrested persons with the mace, without any written authority;<sup>4</sup> and at the present day he takes into custody strangers who intrude themselves into the house or otherwise misconduct themselves, in virtue of the general orders of the house, and without any specific instructions.<sup>5</sup> The Speaker has also directed the Serjeant to take offenders into custody (see p. 88).

Arrests  
without  
warrant.

The Lords attach and commit persons by order, without any warrant. The order of the house is signed by the Clerk of the Parliaments, and is the authority under which the officers of the house and others execute their duty.

Attach-  
ment by  
the Lords.

Wilful disobedience to orders, within its jurisdiction, is a contempt of any court, and disobedience to the orders and rules of Parliament in the exercise of its constitutional functions, is treated as a breach of privilege. Insults and obstructions, also, offered to a court at large, or to any of its members, are contempts; and in like manner, by the law of Parliament, are breaches of privilege. It would be vain to attempt an enumeration of every act which might be

Breaches  
of privi-  
lege de-  
fined.

<sup>1</sup> Judgment of Court of Exchequer Chamber in *Gosset v. Howard* (1847), 10 Q. B. *per* Parke, B., at 453, 455.

<sup>2</sup> 2 L. J. 201 (1597); *ib.* 256 (1601); *ib.* 296; 11 *ib.* 252, &c.; 1 C. J. 175, 680. 886 (1623 and 1638); 9 *ib.* 351 (1675); 21 *ib.* 705 (1731); 35 *ib.* 323 (1775); 80 *ib.* 445 (1825); 82 *ib.* 561 (1827); 95 *ib.* 30. 56, 59 (1840); 135 *ib.* 70 (1880).

<sup>3</sup> See precedents collected in App. to 2nd Rep. Select Committee on Printed Papers, Parl. Pap. (H. C.) sess. 1845, No. 397, p. 104.

<sup>4</sup> Bainbrigge's case, 29th Feb. 1575, 1 C. J. 109; 1 Hatsell, 92; Parl. Pap. (H. C.) sess. 1845, No. 397, p. vi.

<sup>5</sup> 29 C. J. 23; 74 *ib.* 537; 85 *ib.* 461; 86 *ib.* 323; 88 *ib.* 246; 102 *ib.* 99.

construed into a breach of privilege : but certain principles may be collected from the journals, which will serve as general declarations of the law of Parliament.

Disobedi-  
ence of  
general  
orders and  
rules.

Disobedience to any of the orders or rules which regulate the proceedings of the house is a breach of privilege, but if such orders should appear to clash with the common or statute law of the country, their validity is liable to question, as will be shown hereafter (see p. 126). As examples of general orders, the violation of which will be regarded as breaches of privilege, the following may be sufficient.

Publica-  
tion of  
debates.  
Lords.

The publication of the debates of either house has been repeatedly declared to be a breach of privilege, and especially false and perverted reports of them ; and no doubt can exist that if either house desire to withhold their proceedings from the public, it is within the strictest limits of their jurisdiction to do so, and to punish any violation of their orders.<sup>1</sup>

S. O.  
(H. L.)  
No. 73

Under the Lords' standing order of the 27th February, 1698, it is a breach of privilege for any person, without the leave of the house, to print, or publish in print, anything relating to its proceedings.

In 1801, Allan Macleod and John Higginbottom were fined respectively 100*l.* and 6*s.* 8*d.*, and were committed to Newgate for six months, for publishing and vending certain paragraphs purporting to be a proceeding of the house, which had been ordered to be expunged from the journal, and the debate thereupon. In the same year, H. Brown and T. Glassington were committed to the custody of Black Rod, for printing and publishing, in the *Morning Herald* newspaper, paragraphs which purported to be an account of what passed in debate, but which the house declared to be a scandalous misrepresentation.<sup>2</sup>

Commons.

On the 13th and the 22nd July, 1641, it was ordered by the Commons, "That no member shall either give a copy, or publish in print anything that he shall speak here, without leave of the house ;" and "that all the members of the house are enjoined to deliver out no copy or notes of anything that is brought into the house, or that is propounded or agitated in the house."<sup>3</sup>

Report of  
debates.

Repeated orders also have been made by the house forbidding the publication of the debates and proceedings of the house, or of

<sup>1</sup> For the provisions made in 1916 as to reports of debates if either house resolved to hold a "secret session," see p. 191, n. 6.

<sup>2</sup> 43 L. J. 80. 105. 115. 225. 230.

<sup>3</sup> 2 C. J. 209. 220. (Publication of Lord Digby's speech.)



any committee thereof, and of comments thereon, or on the conduct of members in the house, by newspapers, newsletters, or otherwise, and directing the punishment of offenders against such rules.<sup>1</sup> These orders have long since fallen into disuse; though the Speaker has ruled that a member cannot be required to state whether expressions alleged to have been made by him in the house were correctly reported in a newspaper.<sup>2</sup> Debates are daily cited in Parliament from printed reports; galleries are constructed for the accommodation of reporters;<sup>3</sup> committees have been appointed to provide increased facilities for reporting and a place is reserved for a reporter near the table of the House of Lords. Grants were voted annually from 1878 till 1908 to further the publication of the debates, and since 1909 the debates have been reported and issued by an official staff.<sup>4</sup>

When a wilful misrepresentation of the debate arises, or if it may be necessary to enforce the restriction the house censures or otherwise punishes the offender, whether he be a member of the house or a stranger admitted to its debates.<sup>5</sup> But as orders prohibiting the publication of debates are still retained upon the journals, the action of the house, in dealing with the misrepresentation of its debates, is somewhat anomalous. The ground of complaint is the incorrect report of a speech: but the motion for the punishment of the printer assumes that the publication of the debate at all is a breach of privilege.<sup>6</sup> The principle, however, by which both houses are governed, is now sufficiently acknowledged. So long as the debates are correctly and faithfully reported, the privilege which prohibits their publication is waived: but when they are reported *malâ fide*, the publishers of newspapers are liable to censure.<sup>7</sup> By the Newspaper

Com-  
plaints of  
reports.

<sup>1</sup> 2 C. J. 501; 11 ib. 193. 439; 12 ib. 48. 661; 13 ib. 767; 14 ib. 270; 20 ib. 99; 21 ib. 238; 29 ib. 207; 45 ib. 508; 75 ib. 57; see also the Second Report on Sir Francis Burdett (1810), 65 C. J. 732.

<sup>2</sup> 92 C. J. 270.

<sup>3</sup> Reporters' Gallery, House of Lords, since 15th Oct. 1831; in the House of Commons, since 19th Feb. 1835, 3 Walpole, Hist. 287.

<sup>4</sup> See Report of Select Committee on Parliamentary Debates, Parl. Pap. (H. C.) sess. 1907, No. 239; debate on Supplementary Estimate, 14th May, 1908, 188 Parl. Deb. 4 s. 1256; and 19 H. L. Deb. 5 s. 20. Since 1909 the debates of the two houses have been issued separately. In the Lords the debates come within the

purview of the House of Lords' Offices Committee, while in the House of Commons one of the functions of the Select Committee on Publications and Debates' Reports appointed each session is "to assist Mr. Speaker in the arrangements for the Official Reports of Debates." As to the corrections allowed to be made in the reports of speeches in the daily parts for reproduction in the bound volumes, see 60 H. C. Deb. 5 s. 1632.

<sup>5</sup> 67 C. J. 432; 74 ib. 537; 88 ib. 606.

<sup>6</sup> 72 H. D. 3 s. 580; 104 ib. 1054.

<sup>7</sup> See Lord Hartington's proposed resolution, 224 H. D. 3 s. 48. See also Report of Lords' Committee on the Privilege of Reports, 89 L. J. 218, and debate on second reading of Libel Bill [Lords] 149

News-  
paper re-  
ports of  
Committee  
meetings  
privileged.

Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), fair and accurate newspaper reports of the proceedings of public meetings, published without malice and for the public benefit, are privileged.<sup>1</sup>

Evidence  
before  
commit-  
tees and  
draft re-  
ports.

It is declared to be a breach of privilege for a member, or any other person, to publish the evidence taken before a select committee, until it has been reported to the house ;<sup>2</sup> and the proprietor of a newspaper has been committed by the House of Commons for the publication of a committee's draft report.<sup>3</sup> On the 18th April, 1875, complaint was made of the publication in two newspapers of the proceedings and evidence taken before the select committee on Foreign Loans. The publication was declared a breach of privilege ; and the printers were ordered to attend : but as it appeared in debate that the publication had not been unauthorized by the committee, they were directed to report the circumstances under which the documents had been communicated to the newspapers. A special report was accordingly made, and no further proceedings were taken.<sup>4</sup>

In 1850, a draft report of the committee on Postal Communication with France was published in two newspapers, while it was under consideration. The committee vainly endeavoured to trace the parties from whom the copy had been obtained, but recommended improved regulations for the printing, distribution and custody of such documents.<sup>5</sup>

In 1901 a statement purporting to represent proposals contained in confidential papers referred to the select committee on the civil list with a report of the proceedings of the committee was published in a newspaper. The committee was unable to ascertain in what manner this had been divulged, but recommended that the Speaker should take steps to prevent such publication in future.<sup>6</sup>

Resolutions are agreed to at the beginning of each session, which declare that the house will proceed with the utmost severity against persons who tamper with witnesses, in respect of evidence to be

Disobedi-  
ence to  
particular  
orders.

H. D. 3 s. 947. Regarding the taking of notes in the side gallery of the House of Commons, by an officer of the house, July, 1879, see 248 ib. 47. 163. 228.

<sup>1</sup> A newspaper proprietor is not liable for publishing a faithful report of a parliamentary debate, *Wason v. Walter* (1868),

L. R. 4 Q. B. 73.

<sup>2</sup> 92 C. J. 282.

<sup>3</sup> 87 C. J. 360.

<sup>4</sup> 130 C. J. 141. 148, 223 H. D. 3 s. 789.

<sup>5</sup> Parl. Pap. (H. C.) sess. 1850, No. 381, p. vi. See also Second Special Report of Select Committee on the Cottage Homes Bill, Parl. Pap. (H. C.) sess. 1899, No. 271, 154 C. J. 327.

<sup>6</sup> Parl. Pap. (H. C.) sess. 1901, No. 87, 156 C. J. 80.

given to the house, or any committee thereof; who endeavour to deter or hinder persons from appearing or giving evidence; and who give false evidence before the house or any committee thereof. The house has acted on these resolutions with severity; and the journals abound with cases in which witnesses have been punished by commitment to the Serjeant-at-arms, and to Newgate, for prevaricating or giving false testimony, or suppressing the truth; for refusing to answer questions, or to produce documents in their possession. If a witness be guilty of such misbehaviour before a committee of the whole house, or a select committee, the circumstance is reported to the house, by whom the witness is dealt with.<sup>1</sup>

Disobedience of witnesses.

There are various other orders and rules connected with parliamentary proceedings; for example, to prevent the forgery of signatures to a petition (see p. 553); for the protection of witnesses (see p. 119); for the protection of the officers of the house (see p. 67); and for other purposes which will appear in different parts of this work. A wilful violation of any of these orders or rules, or general misconduct in reference to the proceedings of Parliament, will be censured, or punished, at the pleasure of the house whose orders are concerned.<sup>2</sup>

Indignities offered to the character or proceedings of Parliament, by libellous reflections, have been punished as breaches of privilege. Some offenders have escaped with a reprimand, or admonition;<sup>3</sup> others have been committed to the custody of Black Rod, or the Serjeant-at-arms; while many have been confined in the Tower and in Newgate; and in the Lords, fine, imprisonment and the pillory have been adjudged. Prosecutions at law have also been ordered against the parties.<sup>4</sup> The cases are so numerous, that only a few of the most remarkable need be given.

Libels upon Parliament.

For offences, not directly concerning the house, the House of Lords addresses the Crown to direct the attorney-general to prosecute.<sup>5</sup>

Prosecutions by attorney-general.

<sup>1</sup> 21 C. J. 842; 64 ib. 54; 82 ib. 473; 88 ib. 212. 218; 90 ib. 478. 500. 501. 504. 514. 520. 601; 29 H. D. 3 s. 1279; Orange Lodges (Colonel Fairman), 90 C. J. 564. 571. 575. 577; 103 ib. 258; 112 ib. 354. 377; 147 H. D. 3 s. 565. 1085; 121 C. J. 239; 147 ib. 129. 157. 166; 152 ib. 361. 365. In Session 1912-13 a witness was reported to the House for refusing to answer questions and produce documents before a select committee, but further action was not taken by the House, 167

C. J. 543.

<sup>2</sup> 34 C. J. 800; 22 ib. 146; 4 L. J. 705; 37 ib. 613; 38 ib. 338. 649; 82 ib. 89. 367. 384. 477.

<sup>3</sup> 72 C. J. 245; 77 ib. 432, &c.

<sup>4</sup> 34 L. J. 330; 11 C. J. 774; 23 ib. 546; 26 ib. 9. 304; 34 ib. 404; 44 ib. 463; Report Lords' Committee, 18th May, 1716, 20 L. J. 362.

<sup>5</sup> 16 L. J. 286; 17 ib. 114; 21 ib. 344; 30 ib. 420; 36 ib. 143; 52 ib. 881.

and the practice of the House of Commons is substantially the same. In some cases, it orders the attorney-general to prosecute, of its own authority, and in other cases addresses the Crown to direct such prosecutions. The principle of this distinction, though not invariably observed, appears to have been, that in offences against the house, or connected with elections, the attorney-general has been directed to prosecute :<sup>1</sup> but in offences of a more general character against the public law of the country, addresses have been presented to the Crown.<sup>2</sup>

Libels on  
the Lords.

Severe punishments were formerly awarded by the Lords in cases of libel, as fine, imprisonment and pillory :<sup>3</sup> but in modern times commitment, with or without fine, has been the ordinary punishment.<sup>4</sup> On the 15th December, 1756, George King was fined 50*l.*, and committed to Newgate for six months, for publishing "a spurious and forged printed paper, dispensed and publicly sold as his Majesty's speech to both houses of Parliament."<sup>5</sup> In 1798, Messrs. Lambert and Perry were fined 50*l.* each, and committed to Newgate for three months, for a newspaper paragraph highly reflecting on the honour of the house.<sup>6</sup>

Libels on  
the Commons.

In the Commons, William Thrower was committed to the custody of the Serjeant, in 1559, for a contempt in *words* against the dignity of the house. In 1580, Mr. Arthur Hall, a member, was imprisoned, fined and expelled, for having printed and published a libellous paper containing "matter of infamy of sundry good particular members of the house, and of the whole state of the house in general, and also of the power and authority of the house."<sup>7</sup> In 1628, Henry Aleyn was committed to the custody of the Serjeant for a libel on the last Parliament.<sup>8</sup> In 1643, the Archdeacon of Bath was committed for abusing the last Parliament. In 1701, Thomas Colepepper was committed for asserting that members of the previous House of Commons had received money from France ; and the attorney-general was directed to prosecute him. In 1805, Peter Stuart was committed for printing, in his newspaper, severe comments on the treatment of Lord Melville by the house. In 1810, Sir F. Burdett,

<sup>1</sup> 1 Hatsell, 128. *n.* ; 96 C. J. 394. 413 ; 109 ib. 159 ; 112 ib. 355.

<sup>2</sup> From 1711 to 1852 there were 20 addresses, two only being election cases ; and 17 orders to prosecute, all being libel or election cases except one, which was for a riot.

<sup>3</sup> 4 L. J. 615 ; 5 ib. 241. 244 ; 20 ib. 363 ; 22 ib. 353. 354.

<sup>4</sup> 22 L. J. 351. 367. 380.

<sup>5</sup> 29 L. J. 16 ; 15 Parl. Hist. 779.

<sup>6</sup> 41 L. J. 506.

<sup>7</sup> 1 Hatsell, 93.

<sup>8</sup> 1 C. J. 60. 126. 925 ; D'Ewes, 291-298.

a member, was sent to the Tower for publishing an address to his constituents denying the right of the house to imprison for breach of privilege. In 1819, Mr. Hobhouse, having acknowledged himself the author of a pamphlet denouncing the resistance offered by the House of Commons to parliamentary reform, was committed to Newgate.<sup>1</sup> On the 26th February, 1838, complaint was made of expressions in a speech of Mr. O'Connell, a member, at a public meeting, as containing a charge of foul perjury against members of the house, in the discharge of their judicial duties in election committees. Mr. O'Connell was heard in his place, and avowed that he had used the expressions complained of. He was declared guilty of a breach of privilege, and, by order of the house, was reprimanded in his place by the Speaker.<sup>2</sup> A charge that the Commons permitted the presence among them of men "whose political existence depends on an organized system of midnight murder," has been held not to be a case of privilege.<sup>3</sup>

The power of the house to commit the authors of libels was questioned before the Court of King's Bench, in 1811, by Sir F. Burdett, but was admitted by all the judges of that court, without a single expression of doubt.<sup>4</sup>

Interference with or reflections upon members have been resented as indignities to the house itself.

In the Lords, this offence has been visited with peculiar severity, of which numerous instances are to be found in the earlier volumes of their journals.<sup>5</sup> On the 22nd March, 1628, Thomas Morley was fined 1000*l.*, sent to the pillory, and imprisoned in the Fleet, for a libel on the lord keeper; and on the 9th July, 1663, Alexander Fitton was fined 500*l.*, and committed to the King's Bench, for a libel on Lord Gerard of Brandon, and ordered to find sureties for his behaviour during life.<sup>6</sup> Parties also have been attached for libels on peers, as in 1722, for printing libels concerning Lord Strafford and Lord Kinnoul; and fined and committed, as in the case of Flower, in 1799, for a libel on the Bishop of Llandaff. In 1776, Richard Cooksey was attached for sending an insulting letter to the Earl of Coventry,

Assaults,  
insults, or  
libels upon  
members.  
Lords.

<sup>1</sup> 2 C. J. 63; 13 ib. 735; 60 ib. 113; 65 ib. 252; 75 ib. 57.

<sup>2</sup> 93 C. J. 307. 312. 316.

<sup>3</sup> *Times* newspaper, 22nd Feb. 1887, 311 H. D. 3 s. 286; see also 2nd Aug. 1888, 143 C. J. 420.

<sup>4</sup> *Burdett v. Abbot* (1811), 14 East, 1.

<sup>5</sup> 3 L. J. 842. 851; 4 ib. 131; 5 ib. 24.

<sup>6</sup> 3 L. J. 276; 11 ib. 554; W. Carr was punished by fine, the pillory and imprisonment, for the same offence, 12 ib. 174; Downing imprisoned and fined, 14 ib. 144.

reprimanded, and ordered into custody until he gave security for his good behaviour.<sup>1</sup> In 1834, Thomas Bittleston, editor of the *Morning Post* newspaper, was committed to the custody of the usher of the Black Rod for a paragraph in that newspaper reflecting upon the conduct of Lord Chancellor Brougham, in the discharge of his judicial duties in the House of Lords.<sup>2</sup>

**Commons.** In the Commons, on the 12th April, 1783, and 1st June, 1780, it was resolved that it was a high infringement of the privilege of the house, a crime and misdemeanour, to assault, insult, or menace any member of the house, in his coming or going from the house, or upon the account of his behaviour in Parliament; or to endeavour to compel members by force to declare themselves in favour of or against any proposition then depending, or expected to be brought before the house.<sup>3</sup> In numerous instances, both before and after these resolutions, persons assaulting, challenging, threatening or otherwise molesting members on account of their conduct in Parliament, have been committed or otherwise punished by the house.

On the 22nd June, 1781, complaint was made that Sir J. Wrottesley had received a challenge for his conduct as a member of the Worcester election committee; and Swift, the person complained of, was committed to the custody of the Serjeant.<sup>4</sup> Daniel Butler, a sheriff's officer, was committed to Newgate, 13th April, 1809, for arresting and insulting Sir Charles Hamilton.<sup>5</sup>

On the 11th July, 1824, the Speaker, having received information that a member had been assaulted in the lobby, ordered the Serjeant to take the person into custody; and doubts being entertained of his sanity, he was ordered to stand committed to the custody of the Serjeant.<sup>6</sup>

In 1827, complaint was made of three letters which had been sent to Mr. Secretary Peel, threatening to contradict his speeches from the gallery of the house. The letters were read, and the writer, H. C. Jennings, ordered to attend. He acknowledged the letters, was declared guilty of a breach of privilege and received a reprimand from the Speaker.<sup>7</sup> On the 12th June, 1876, complaint was made of a letter to a member, intimating that, under the rules of the

<sup>1</sup> 22 L. J. 129. 149; 42 ib. 181; 39 ib. 314. 331.

<sup>2</sup> 66 L. J. 704. 737. 743. 764, 24 H. D. 3 s. 892. 941. 1006. 1065.

<sup>3</sup> 22 C. J. 115; 37 ib. 902.

<sup>4</sup> 38 C. J. 535-537; see also 15 ib. 405; 16 ib. 562, &c.

<sup>5</sup> 64 C. J. 510. 213.

<sup>6</sup> 79 C. J. 483.

<sup>7</sup> 82 C. J. 395. 399.

Reform Club, he was liable to be removed for his political conduct ; but no action was taken by the house.<sup>1</sup>

On the 10th February, 1888, a member, who was mistaken for another person, on quitting the precincts of the house, was wrongfully arrested by a police officer upon a warrant issued under the Criminal Law and Procedure (Ireland) Act, 1887. At the next sitting of the house the matter was brought forward, and a motion proposed that a high infringement of the privilege of Parliament had been committed. This motion was, however, set aside by an amendment expressing the regret of the house for the occurrence, and stating that, as it arose from a mistake, it was unnecessary to proceed further with the matter.<sup>2</sup> On the 26th November, 1888, a complaint that an attempt had been made to serve a summons, also issued under the above-mentioned Act, upon a member in the outer lobby of the house, was brought before the house in committee. Report of progress was made ; the Speaker resumed the chair ; and a select committee was appointed to consider the matter. The committee reported (8th December) that the attempted service of a summons upon a member within the precincts of the house, whilst the house was sitting, without the leave of the house first obtained, was a breach of the privileges of the house ; but that the committee did not recommend the interposition of the house in any proceedings against the constable who had made the attempted service, as the committee were satisfied that no violation of the privileges of the house was intended ; and subsequently (13th December) when, upon the consideration of the report, a motion was made " that this house doth concur in the report of the committee," an amendment was carried, " that the house do now proceed to the orders of the day." <sup>3</sup>

Wrongful arrest of members and service of summons within the precincts.

Reflections on the character of the Speaker and accusations of Libels on the Speaker.

<sup>1</sup> 131 C. J. 252, 229 H. D. 3 s. 1670.

<sup>2</sup> 143 C. J. 30, 322 H. D. 3 s. 262.

<sup>3</sup> 143 C. J. 484, 503, 510 ; Parl. Pap. (H. C.) sess. 1882, No. 411. The case of Bogo de Clare, who cited the Earl of Cornwall in Westminster Hall, during Parliament time, 18 Edw. I. (1290), and who, in consequence, suffered fine and imprisonment, is the earliest example of breach of privilege by the service of a citation in a royal palace, and not of freedom from arrest, p. 110, n. 1, 1 Rot. Parl. 17. It has been doubted whether a writ of sum-

mons to appear in a civil action can be served upon a member within the precincts of the houses of Parliament ; but as it is only a process upon such action, it would appear to be warranted by the statutes cited above. But " no arrest can be made in the king's presence, nor within the verge of the Palace of Westminster, nor in any palace where he resides, nor in any place where the king's justices are sitting." 3 Co. Inst. 140 ; 3 Bl. Com. 280.

partiality in the discharge of his duty have been treated severely by the house.

On the 11th February, 1774, the Speaker informed the House of a letter in the *Public Advertiser* newspaper addressed to him reflecting on his character and on his conduct as Speaker. The house ordered H. S. Woodfall, the printer, to attend, and resolved that the letter was "a false, malicious and scandalous libel highly reflecting on the character of the Speaker of this house to the dishonour of this house and in violation of the privileges thereof." The printer was declared to be guilty of a breach of privilege and committed to the custody of the Serjeant-at-arms.<sup>1</sup>

On the 4th April, 1887, an accusation of partiality in the administration of the closure, directed against the Speaker by a member at a public meeting, was informally brought before the house by a question addressed to the chair. The Speaker, in his reply, explained the nature of the offence which had thus been committed against the house by the member's conduct towards the Speaker; and the member made, in consequence, an apology in terms that averted the consequences of the offence.<sup>2</sup> In the following year the same member published in a newspaper a letter which contained a repetition of the same offence against the Speaker. The house thereupon, having heard the member in his place, resolved that the letter was a gross libel upon Mr. Speaker, deserving the severest condemnation of the house, and that the member be suspended from the service of the house for the remainder of the session, or for one calendar month, whichever should first terminate.<sup>3</sup>

On the 27th July, 1891, a member complained of certain entries in the Votes and Proceedings which stated that he had frivolously claimed divisions. The Speaker thereupon informed the house of two communications which he had received from the member in question impugning his conduct in the chair, and the house ordered the suspension of the member for one week.<sup>4</sup>

On the 13th March and the 4th July, 1893, the attention of the house was called to letters written by a member to two newspapers criticising the action of the Speaker. After the letters had been read, the Speaker deprecated severe action being taken, and the members who had raised the question of privilege stated that they would not submit motions to the house. On the 7th July, however, the member

<sup>1</sup> 34 C. J. 452, 456.

<sup>2</sup> 313 H. D. 3 s. 371.

<sup>3</sup> 143 C. J. 385, 329 H. D. 3 s. 48.

<sup>4</sup> 146 C. J. 481, 356 H. D. 3 s. 419.



whose action had been impugned asked leave to make a personal explanation of the letter read to the house on the 4th July, in the course of which he justified what he had done. The letter was again read and was declared to constitute a breach of the privileges of the house. A motion for the suspension of the member for one week from the service of the house was made, but the member having been given at the instance of the Speaker, an opportunity of apologising, the motion was withdrawn.<sup>1</sup>

On the 17th February, 1911, a letter written by a member of the house to another member, by whom it was published, was brought to the notice of the house as containing a reflection on the Speaker's conduct in the chair. A motion was made "that the letter constitutes a gross libel on Mr. Speaker and is a grave breach of the privileges of this house." The member who had written the letter was heard in his place, and the debate on the motion was adjourned. On the resumption of the debate on the 20th February the writer of the letter was recalled and made a full and unreserved apology, and the motion was withdrawn. The publication of the letter by the member to whom it had been addressed was declared to be a breach of privilege, and the member was suspended from the service of the house for a week.<sup>2</sup>

On the 31st July, 1911, the attention of the house was directed to a letter written by a member to his constituents attributing party partiality to the Speaker. The member who had written the letter apologised to the Speaker and the house, and at the Speaker's suggestion further action was not taken.<sup>3</sup>

An accusation of partiality and discourtesy directed against the Chairman of Ways and Means was brought before the house as a matter of privilege on the 19th July, 1909. The member who had made the accusation acknowledged its impropriety and withdrew it. The Speaker declared the offence to be rather a serious one, but suggested that the house would not wish under the circumstances to pursue the matter further.<sup>4</sup>

Libels upon members have also been constantly punished: but to constitute a breach of privilege they must concern the character or conduct of members in that capacity; and, as is explained on p. 244, the libel must be based on matters arising in the actual

Libels on  
Chairman  
of Ways  
and  
Means.

Libels on  
members.

<sup>1</sup> 148 C. J. 123. 408. 416, 9 Parl. Deb. 1435. 1553.

<sup>4</sup> s. 1866, 14 ib. 820. 1094.

<sup>3</sup> 29 H. C. Deb. 5 s. 34.

<sup>2</sup> 166 C. J. 34. 36, 21 H. C. Deb. 5 s.

<sup>4</sup> 8 H. C. Deb. 5 s. 31.

transaction of the business of the house. Aspersions upon the conduct of members as magistrates, or officers in the army or navy,<sup>1</sup> or as counsel,<sup>2</sup> or employers of labour, or in private life, or otherwise than in relation to Parliament, are within the cognizance of the courts, and are not fit subjects for complaints to the House of Commons. In 1680, A. Yarrington and R. Groome were committed for a libel against a member. In 1689, 1696 and 1704, Christopher Smelt, John Rye and J. Mellot were committed for libelling members. In 1733, William Noble was committed for asserting that a member received a pension for his voting in Parliament. In 1821, the author of a paragraph in the *John Bull* newspaper, containing a false and scandalous libel on a member, was committed to Newgate.<sup>3</sup>

On the 1st March, 1824, Mr. Abereromby made a complaint to the house that the lord chancellor in his court had used offensive expressions with reference to what had been said by himself in debate : but on division the matter was not allowed to proceed any further.<sup>4</sup>

Other cases, too numerous to mention, have occurred, in some of which the parties have been committed or reprimanded.<sup>5</sup> In 1844, a member having made charges at a public meeting against two members of the house, was ordered to attend in his place ; and after he had been heard, the house resolved that his imputations were wholly unfounded and calumnious, and did not affect the honour and character of the members concerned.<sup>6</sup>

A complaint was made 17th February, 1880, of the publication of printed placards throughout the city of Westminster, reflecting upon the conduct of Sir Charles Russell, member for that city, and signed by Mr. Plimsoll, a member. On the 20th February, Mr. Plimsoll, having withdrawn and apologized for the expressions complained

<sup>1</sup> 5 H. C. Deb. 5 s. 415.

<sup>2</sup> Dr. Kenealy's case, 4th March, 1875 ; 222 H. D. 3 s. 1185.

<sup>3</sup> 9 C. J. 654. 656 ; 10 ib. 244 ; 11 ib. 656 ; 14 ib. 565 ; 23 ib. 245 ; 76 ib. 335.

<sup>4</sup> 79 C. J. 112, 10 H. D. 2 s. 571.

<sup>5</sup> See the head of PRIVILEGES in the General Journal Index 1547-1713, and COMPLAINTS in subsequent Indexes ; and the cases of Mr. Aston in 1872 ; Mr. Plimsoll and *Pall Mall Gazette* in 1873 ; Mr. O'Donnell and the *Globe* in 1878 ; Sir S. Northcote and Mr. Callan, and Speeches by Mr. John Bright, 138 C. J. 280 ; 140 ib. 358 ; see also Mr. Speaker's observations, 15th March, 1883, 277 H. D. 3 s.

570. Charges by the *Times* newspaper against a member of giving to the house a false explanation (3rd May, 1887), 142 C. J. 208. 215. 218 ; complaint that the *Times* newspaper had published a letter attributed to Mr. Parnell (11th Feb. 1890), 145 C. J. 7 ; also charges against members (16th Feb. 1893), 148 ib. 66 ; charges against a minister by the *Daily Mail* newspaper (30th July, 1901), 156 ib. 355 ; charges by the *Globe* newspaper (14th August, 1901) that members were actuated by pecuniary motives in discharging their duties as private bill committees, 156 ib. 414. 418.

<sup>6</sup> Mr. Ferrand's case, 99 C. J. 235. 239.

of, the house condemned his conduct as a breach of privilege : but, having regard to the withdrawal of the expressions complained of, resolved that no further action was necessary.<sup>1</sup>

On some occasions the house has also directed prosecutions against persons who have published libels reflecting upon members, in the same manner as if the publications had affected the house collectively.<sup>2</sup>

Scandalous charges or imputations directed against members of a select committee are equivalent to libellous charges brought against the house itself,<sup>3</sup> while a letter complaining that a member who had been nominated upon a select committee would be unable to act impartially upon it has been adjudged a breach of privilege.<sup>4</sup> In 1832, Messrs. Kidson & Wright, solicitors, were admonished for having addressed to the committee on the Sunderland Dock Bill, a letter reflecting on the conduct of members of the committee, copies of which were circulated in printed handbills.<sup>5</sup> On the 1st June, 1874, Mr. France was admonished at the bar, by the Speaker, for addressing a letter to the chairman of the committee on explosive substances, imputing unfair conduct to him and other members of the committee.<sup>6</sup>

On the 2nd May, 1695, the house resolved that "the offer of money, or other advantage, to a member of Parliament, for the promoting of any matter whatsoever, depending or to be transacted in Parliament, is a high crime and misdemeanour."<sup>7</sup> In the spirit of this resolution, the offer of a bribe, in order to influence a member in any of the proceedings of the house, or of a committee, has been treated as a breach of privilege, being an insult not only to the member himself, but to the house.<sup>8</sup>

The acceptance of a bribe by a member has ever, by the law of Parliament, been a grave offence, which has been visited by the severest punishments. In 1677, Mr. John Ashburnham was expelled for receiving 500*l.* from the French merchants for business

Reflections on members of select committees.

Offering bribes to members.

Acceptance of bribes by members.

<sup>1</sup> 135 C. J. 46. 54, 250 H. D. 3 s. 797. 1108.

<sup>2</sup> 13 C. J. 230 ; 14 ib. 37.

<sup>3</sup> 315 H. D. 3 s. 647.

<sup>4</sup> 165 C. J. 179. See also Mr. Speaker's remarks as to the action of a parliamentary agent in objecting to a member who had been nominated by the General Committee on Railway and Canal Bills as chairman of the committee on a group of Railway Bills, 7 H. C. Deb. 5 s. 235.

<sup>5</sup> 87 C. J. 278. 294. For similar cases of libels upon committees, see 72 ib. 232 (Police Committee, 1816) ; 93 ib. 436 (Shaftesbury Election) ; 113 ib. 189, &c. (Carlisle and Hawick Railways) ; 150 H. D. 3 s. 1022. 1063. 1198, &c.

<sup>6</sup> 129 C. J. 181. 189, 219 H. D. 3 s. 752. 755.

<sup>7</sup> 11 C. J. 331.

<sup>8</sup> 11 C. J. 274. 275 ; 14 ib. 474 ; 17 ib. 493. 494 ; 19 ib. 542.

done in the house.<sup>1</sup> In 1694, Sir John Trevor was declared guilty of a high crime and misdemeanour, in having, while Speaker of the house, received a gratuity of a thousand guineas from the City of London, after the passing of the Orphans Bill, and was expelled.<sup>2</sup> In 1695, Mr. Guy, for taking a bribe of two hundred guineas, was committed to the Tower,<sup>3</sup> and Mr. Hungerford was expelled, for receiving twenty guineas for his service as chairman of the committee on the Orphans Bill.<sup>4</sup>

Nor has the law of Parliament been confined to the repression of direct pecuniary corruption. To guard against indirect influence, it has further restrained the acceptance of fees by its members, for professional services connected with any proceeding or measure in Parliament.<sup>5</sup>

Prohibition  
against  
member's  
acting as  
counsel  
before  
house or  
commit-  
tees or as  
parlia-  
mentary  
agents.  
Counsel  
before the  
Lords.

A member is accordingly incapable of practising as counsel before the house, or any committee. By resolution, 26th February, 1830, members of the House of Commons are prohibited from engaging, either by themselves or by a partner, in the management of private bills, before this or the other house of Parliament, for pecuniary reward.<sup>6</sup> Nor is it consistent with parliamentary or professional usage for a member to advise, as counsel, upon any private bill or other proceeding in Parliament.

By resolution 6th November, 1666, members are prohibited from acting as counsel on either side, in bills depending in the House of Lords, before such bill shall come down thence to the House of Commons.<sup>7</sup> In the case, however, of the bill then pending against her Majesty Queen Caroline, Mr. Brougham and Mr. Denman, the queen's attorney and solicitor-general, and the king's attorney and solicitor-general, and Dr. Lushington, were permitted to plead as counsel at the bar of the House of Lords, but such leave was not to

<sup>1</sup> 9 C. J. 24.

<sup>2</sup> 11 C. J. 274, 5 Parl. Hist. 900.

<sup>3</sup> 5 C. J. 886.

<sup>4</sup> 11 C. J. 283, 5 Parl. Hist. 911. Reprimand was administered to Mr. Bird for offering to a member one guinea for preparing a petition, 5 Parl. Hist. 910.

<sup>5</sup> See resolution, 22nd June, 1858, "That it is contrary to the usage and derogatory to the dignity of the house, that any of its members should bring forward, promote, or advocate in this house, any proceeding or measure in which he may have acted or been concerned, for or in consideration of any pecuniary fee or re-

ward," 113 C. J. 247. This resolution has been held not to preclude a member who has been engaged in a criminal case which has been decided from taking part in a debate relating to the case, 8 Parl. Deb. 4 c. 1055. See also proceedings and report on the petition of Edward Coffey, 113 C. J. 68, 77, 148 H. D. 3 c. 1855.

<sup>6</sup> 85 C. J. 107. See complaint 18th April, 1884, of a circular sent by a member to the members of the house soliciting their votes for the third reading of a private bill, for which his son was the solicitor, 139 C. J. 167.

<sup>7</sup> 8 C. J. 646.

be drawn into a precedent.<sup>1</sup> It was also understood that, if the bill should be received by the Commons, none of those gentlemen would be permitted to vote upon it.<sup>2</sup>

It was formerly the custom to give leave to members to plead at the bar of the House of Lords on appeals, the last instance being in 1710, since which time members have been accustomed to plead without leave, in all judicial cases before the House of Lords, and before the committee of privileges.<sup>3</sup>

Assaults, or interference with officers of the house, while in the execution of their duty, have also been punished as breaches of privilege.<sup>4</sup>

To commence proceedings in a court of law against any person for his conduct in obedience to the orders of Parliament, or in conformity with its practice, is a breach of privilege. According to present usage, however, if such an action be commenced against an officer of the house, the Commons have given leave to the officer to appear in the action, when the law officers of the Crown, either by the order of the house,<sup>5</sup> or upon direction given by a minister of the Crown, undertake the officer's defence; or, if it seems expedient, the Speaker can, at his discretion, place the defence of the officer in the hands of the Government. The courts of law have refused to entertain actions brought against members of Parliament, or against an officer of the house, for acts done in the transaction of parliamentary business. A person forwarded to two members a petition for presentation; and the petitions were returned to the sender, because they infringed the rules of the house. That person in consequence brought actions against the members and the clerk who had acted in the matter: but the actions were dismissed on the ground that the causes of complaint were not cognizable by a

Appeals and committee of privileges.

Interference with officers.

Legal proceedings against members and others for the performance of parliamentary duties.

<sup>1</sup> 75 C. J. 444, 2 H. D. 2 s. 400.

<sup>2</sup> Leave was given to Mr. Roebuck to plead at the Lords' bar in support of the Sudbury Disfranchisement Bill; but leave was refused to Mr. C. Buller to plead before the Lords upon the Bolton Waterworks Bill, 97 C. J. 499; 101 ib. 627, 86 H. D. 3 s. 92; see also 8 C. J. 322; 9 ib. 86 (Dean Forest Bill). An Irish divorce bill has been ruled privately to come within the resolution of 1686. See also Macqueen, 203, n. (b). Mr. Brougham, as a member of the House of Commons, was precluded from appearing as counsel

in *Turner v. Wakefield* before the House of Lords because resort was had to a bill of divorce.

<sup>3</sup> 3 C. J. 88; 10 ib. 336; 16 ib. 436; see also 2 H. D. 2 s. 402.

<sup>4</sup> 19 C. J. 366, 370; 20 ib. 185.

<sup>5</sup> This course was pursued in the cases of *Burdett v. Abbot* (p. 70), *Howard v. Gosset* (p. 70); of *Lines v. Russell* (p. 137); of *Bradlaugh v. Erskine* (p. 137); and *Bradlaugh v. Gosset* (p. 138). See also the second report from the committee on Printed Papers, cited, p. 137.

court of law.<sup>1</sup> In a subsequent action it was held that there is no right in a person desirous of petitioning the house to compel any member to present his petition, and that no action will lie against a member for refusing to do so.<sup>2</sup>

Tampering with witnesses.

To tamper with a witness in regard to the evidence to be given by him before the house, or any committee of the house, is a breach of privilege. On the 9th February, 1809, during the inquiry into the conduct of the Duke of York, Mrs. Clarke read a letter addressed to her which suggested that she should leave the country. The writer of the letter was taken into custody: during his examination, he was closely pressed and obliged to answer all the questions relating to his interviews with Mrs. Clarke, and his objects in giving her advice as to her evidence. He appealed to the chairman, whether he was bound to answer questions to prove himself guilty of a breach of privilege. No actual decision was given upon this appeal: but throughout his examination, questions of that character had been addressed to him.<sup>3</sup>

On the 19th June, 1857, a petition was presented, complaining that Peter Johnson had offered the sum of 50*l.* to Rothwell, a witness, who had been served with the Speaker's warrant to attend before the Rochdale election committee, to induce him to go abroad for the purpose of avoiding giving evidence before the committee. Newall, the petitioner, and Rothwell, being ordered to attend the house forthwith, were examined; and a select committee was appointed to continue the inquiry, which resulted, however, in no definite conclusion. Out of this case there arose, incidentally, a question how far a person accused of a breach of privilege is bound to answer questions tending to criminate himself, on which considerable differences of opinion were entertained.<sup>4</sup>

Persons committed by the Speaker.

When the Speaker is accompanied by the mace, he has power to order persons into custody for disrespect, or other breaches of privilege committed in his presence, without the previous order of the house. Mr. Speaker Onslow ordered a man into custody who pressed upon him in Westminster Hall; and a case is mentioned by D'Ewes

<sup>1</sup> *Chaffers v. Goldsmid*, Westminster County Court, 13th Aug. 1891; *Chaffers v. Simeon*, Div. Court Queen's Bench; *Chaffers v. Gibbs*, Lord Mayor's Court, *Times* reports, 1st April and 20th May, 1892.

<sup>2</sup> *Chaffers v. Goldsmid*, [1894] 1 Q. B.

186.

<sup>3</sup> 12 H. D. 1 s. 461.

<sup>4</sup> 146 H. D. 3 s. 97. In 1857, the Congress of the United States passed a bill making it a misdemeanour to refuse to answer questions put in either House of Legislature.

in which a member seized upon an unruly page and brought him to the Speaker, by whom he was committed prisoner to the Serjeant. In 1675, Sir Edward Seymour, the Speaker, seized Mr. Serjeant Pemberton, and delivered him into the custody of a messenger: but in that case Pemberton had already been in custody, and had escaped from the Serjeant-at-arms.<sup>1</sup>

In all these classes of offences, both houses will commit, or otherwise punish, in the manner described: but not without due inquiry into the alleged offence.

Inquiry  
into al-  
leged  
breaches  
of privi-  
lege.

The Lords, by standing orders Nos. 75 & 76, have endeavoured to impose restraint upon frivolous complaints of breach of privilege.<sup>2</sup>

Lords.

Before the year 1845, it had been customary for the House of Lords, when inquiring into an alleged breach of privilege, to conduct the inquiry with closed doors,<sup>3</sup> but, in later cases, strangers have not been ordered to withdraw.

In the Commons, under resolutions, 31st January, 1694, and 3rd January, 1701, no person should be taken into custody, upon complaint of breach of privilege, before the matter be first examined by the committee of privileges, and reported to the house, though it was also declared, "That the said order is not to extend to any breach of privilege upon the person of any member of this house."<sup>4</sup>

The appointment of the committee of privileges, at the commencement of each session, was discontinued in 1833, together with that of the ancient grand committees; but was revived *pro formâ* in 1837 and has been continued since that year. It was not the practice, however, to nominate the committee unless some matter had arisen which had been referred to its consideration.<sup>5</sup> The committee when nominated consisted of certain members selected by the house together with all knights of the shire, gentlemen of the long robe<sup>6</sup> and merchants in the house. In 1857, a committee, constituted in a similar manner, was appointed to consider the oaths of members, and consisted of twenty-five members, nominated by

Commit-  
tee of  
privileges.

<sup>1</sup> 2 Hatsell, 241, *n.*; D'Ewes, 629; 9 C. J. 351. 353; see also 1 ib. 157. 210. 972.

<sup>2</sup> See also Commons' resolution to the same effect, 11th Feb. 1768, 31 C. J. 602.

<sup>3</sup> The umbrella case, 26th March, 1827, 17 H. D. 2 s. 34. Lord Hawarden's case, 31 Jan. 1828, 18 H. D. 2 s. 69.

<sup>4</sup> 11 C. J. 219; 13 ib. 640.

<sup>5</sup> Imprisonment of a member, 1837, eight members being specially nominated,

92 C. J. 16. 23. 56; Gloucester County Election, and Sligo Election Petition, 1847, nine members specially nominated, 103 C. J. 129. 139. 307. 676. 764.

<sup>6</sup> This term is understood to comprise all members who, at the time, would be qualified to practise as counsel, according to the rules and usage of the profession, whether actually practising or not, Denison, 6.

the house, and all gentlemen of the long robe.<sup>1</sup> Questions of privilege during this period were more frequently referred to select committees appointed for the purpose.<sup>2</sup> In 1904, and most subsequent years, the committee has been nominated and has consisted of seven members,<sup>3</sup> and questions of privilege have been referred to it.<sup>4</sup>

Proceed-  
ings upon  
com-  
plaints.

It is the present practice, when a complaint is made, to order the person complained of to attend the house; <sup>5</sup> and on his appearance at the bar, or, if a member, in his place, he is examined and dealt with, according as the explanations of his conduct are satisfactory or otherwise; or as the contrition expressed by him for his offence conciliates the displeasure of the house. If there be any special circumstances arising out of a complaint of a breach of privilege, and the matter is not referred to the committee of privileges (see p. 89), it is usual to appoint a select committee to inquire into them, and the house suspends its judgment until their report has been presented; <sup>6</sup> and although any member may bring the matter so reported before the house, it is usual to leave this duty to the charge of the chairman of the committee.<sup>7</sup> An order has been made that the incriminated person might appear by counsel before the committee, on the consideration of evidence given against him "upon all such points as do not controvert the privileges of the house."<sup>8</sup>

Com-  
plaints of  
news-  
papers.

When a complaint is made of a newspaper, the newspaper itself must be produced, in order that the paragraphs complained of may be read.<sup>9</sup> A member complaining of the report of his speech in a newspaper, has been stopped by the Speaker, when it appeared that

<sup>1</sup> 112 C. J. 369.

<sup>2</sup> *E.g.* libel against a member, 1857, 113 C. J. 68. 77; Forgery of Petitions, 1865, 120 C. J. 157. 161. 223. 252. 311; Commitment of a Member, 1874, 129 C. J. 28. 61. 71; Elections (Intervention of Peers), 1887, 142 C. J. 50. 76.

<sup>3</sup> 159 C. J. 258, &c.; 135 Parl. Deb. 4 s. 1502. See also Notices of Motions, sess. 1902, p. 265, for proposal in connection with the changes of procedure suggested by the government for the reference of certain questions of privilege without debate to the committee of privileges.

<sup>4</sup> Intervention of a peer at a parliamentary election, 164 C. J. 319. 449; of a lord lieutenant, 166 C. J. 7. 215; voting

of a peer at a parliamentary election, 166 C. J. 6. 215.

<sup>5</sup> 112 C. J. 231; 113 ib. 189, &c.

<sup>6</sup> Rochdale Election case, 112 C. J. 232, 146 H. D. 3 s. 97, &c.; Tower High Level Bridge Bill, 1879, cases of Grissell and Ward, 134 C. J. 326; Cambrian Railway case, see p. 123.

<sup>7</sup> 3 Parl. Deb. 4 s. 598.

<sup>8</sup> 22nd March, 1771, 33 C. J. 279.

<sup>9</sup> 113 C. J. 189, 150 H. D. 3 s. 1022. 1063. An article complained of (*Times* newspaper, 2nd May, 1887) was, by the Speaker's direction, circulated with the notice paper, 3rd May, 1887, 314 H. D. 3 s. 758.



he had no copy of the newspaper on which to found his complaint.<sup>1</sup> Complaint being made on the 23rd February, 1880, of a series of articles in several newspapers, the Speaker said that if he called upon the Clerk to read all those articles he should be trifling with the house, and that he should therefore take leave to depart from the ordinary course.<sup>2</sup> The member who makes the complaint must also be prepared with the names of the printer or publisher.<sup>3</sup> It is irregular to make such a complaint, unless the member intends to follow it up with a motion,<sup>4</sup> but such a motion has been confined to declaring the article, or letter, to be a breach of privilege, without further action.<sup>5</sup>

Proceedings against a member have been occasionally commenced by a question addressed to him upon the subject ;<sup>6</sup> and where an apology or retraction is expected, a more formal proceeding may thus be averted. Generally the most convenient course is to make the complaint, and to found a motion upon it. The matter may then be regularly discussed by the house. On the 4th March, 1875, Dr. Kenealy having addressed a question to Mr. Evelyn Ashley, and received an answer, proceeded to give notice to bring the matter forward on the following day. But Mr. Lowe rose to discuss it at once, in moving an adjournment. Upon that question a debate ensued, and, on the withdrawal of the motion, a resolution was agreed to, that the house, having heard the explanations of the two members, should proceed to the orders of the day.<sup>7</sup>

Either house will punish in one session offences that have been committed in another.<sup>8</sup> In 1879, C. E. Grissell, having neglected to attend the house to answer for a breach of privilege, was ordered into the custody of the Serjeant, but evaded the execution of the Speaker's warrant, by going abroad, until two days before the close of the session, when he was committed to Newgate.<sup>9</sup> On the 2nd March, 1880, a petition in which he submitted himself to the house was presented, when he was ordered to be sent for in the

Words  
uttered by  
a member.

Offences  
in former  
session.

<sup>1</sup> On the 4th April, 1878, Mr. Parnell, having complained of three newspapers, brought up to the table certain extracts pasted upon paper, and upon the Clerk calling Mr. Speaker's attention to the irregularity, further proceedings were at once arrested, 239 H. D. 3 s. 532.

<sup>2</sup> 135 C. J. 57.

<sup>3</sup> 104 H. D. 3 s. 1056.

<sup>4</sup> 59 H. D. 3 s. 507 ; 82 Parl. Deb. 4 s. 1070.

<sup>5</sup> 99 C. J. 235. 239 ; 109 ib. 318 ; 136 ib. 272 ; 148 ib. 66 ; 156 ib. 355.

<sup>6</sup> Mr. Sullivan and Mr. Lopes, 222 H. D. 3 s. 269 ; Mr. Yorke and Mr. H. Gladstone, 277 ib. 568.

<sup>7</sup> 222 H. D. 3 s. 1185.

<sup>8</sup> 21 L. J. 189 ; 15 C. J. 376. 386 ; 17 ib. 293 ; 20 ib. 549 ; 22 ib. 210 ; Mr. Murray's case, 26 ib. 303.

<sup>9</sup> 134 C. J. 366. 432. 435.

custody of the Serjeant. Being taken into custody, he was ordered to stand committed to the Serjeant, and to be brought in custody to the bar on the following day ; when, having failed to satisfy the house by his apologies, it was ordered that " having evaded punishment for his offences, until the close of the last session, he be committed to the gaol of Newgate." <sup>1</sup>

It also appears that a breach of privilege committed against one Parliament may be punished by another ; and libels against former Parliaments have been punished.<sup>2</sup>

Differences in the punishment inflicted by the Lords and by the Commons.

In all the cases that have been noticed as breaches of privilege, both houses have agreed in their adjudication : but in several important particulars there is a difference in their modes of punishment. The Lords have claimed to be a court of record, and, as such, not only to imprison, but to impose fines. They also imprison for a fixed time, and order security to be given for good conduct ; and their customary form of commitment is by attachment. The Commons, on the other hand, commit for no specified period, and during the last two centuries, have not imposed fines (see p. 94).

Fines imposed by the Lords.

There can be no question that the House of Lords, in its judicial capacity, is a court of record ; but, according to Lord Kenyon, " when exercising a legislative capacity, it is not a court of record." <sup>3</sup> However this may be, instances too numerous to mention have occurred, in which the Lords have sentenced parties to pay fines. Many have already been noticed in the present chapter, as well as cases in which they have ordered security to be given for good conduct, even during the whole life of the parties.<sup>4</sup>

Commitment for specified term by the Lords.

The Lords have power to commit offenders to prison for a specified term, even beyond the duration of the session ; <sup>5</sup> and thus on the 13th August, 1850, being within two days of the prorogation, certain prisoners were committed for a fortnight.<sup>6</sup> If no time were mentioned, and the commitment were general, it has been said that the prisoners could not be discharged on habeas corpus even after a prorogation : <sup>7</sup> but in the case of Lord Shaftesbury, a doubt was

<sup>1</sup> 135 C. J. 70. 73. 77.

<sup>2</sup> 1 C. J. 925 ; 2 ib. 63 ; 13 ib. 735 ; see also Mr. Selden's statement, 1 Hatsell, 184.

<sup>3</sup> Flower's case (1799), 8 Term. Rep. 314.

<sup>4</sup> 3rd April, 1624, 3 L. J. 276 ; 11 ib. 554 ; 12 ib. 174 ; 14 ib. 144 ; 30 ib. 493 (Report of Precedents) ; 42 ib. 181 ; 43

ib. 60. 105 ; 39 ib. 331.

<sup>5</sup> 43 L. J. 105.

<sup>6</sup> 82 L. J. 478.

<sup>7</sup> Lord Denman's judgment in *Stockdale v. Hansard* (1839), Proceedings printed by the Commons, Parl. Pap. (H. C.) sess. 1839, No. 283, p. 147, 9 Ad. & El. 1.

expressed by one of the judges whether the imprisonment, which was for an uncertain time, would be concluded by the session ; and another said, that if the session had been determined, the prisoner ought to have been discharged.<sup>1</sup>

Whether the House of Commons be, in law, a court of record, it would be difficult to determine ; for this claim, once firmly maintained, has latterly been virtually abandoned, although never distinctly renounced. In Fitzherbert's case, in 1592, the house resolved, " That this house being a court of record, would take no notice of any matter of fact at all in the said case, but only of matter of record ; " and the record of Fitzherbert's execution was accordingly sent to the house by the lord keeper. The apology of the Commons, 1604, contains these words : " We avouch also that our house is a court of record, and ever so esteemed." <sup>2</sup> On the other hand, in *Jones v. Randall*,<sup>3</sup> Lord Mansfield said the House of Commons was not a court of record ; yet acting as a court of record, the Commons formerly imposed fines and imprisoned offenders for a time certain.<sup>4</sup>

Whether House of Commons be a court of record.

In *Floyde's case*, in 1621, the Commons clearly exceeded their jurisdiction. That person had spoken offensive words concerning the daughter of James I. and her husband, the elector palatine. In this he may have been guilty of a libel, but certainly of no breach of parliamentary privilege. Yet the Commons took cognizance of the offence, and sentenced *Floyde* to pay a fine of 1000*l.*, to stand twice in the pillory and to ride backwards on a horse, with the horse's tail in his hand.<sup>5</sup> Upon this judgment being given, first the king and then the Lords interfered, because the offence was beyond the jurisdiction of the Commons. The Commons perceived their error, and left the offender to be dealt with by the Lords. If the Commons exceeded their jurisdiction in this case, the Lords equally disregarded the limits of their own, and proceeded to still more disgraceful severities. *Floyde* was sentenced that he should be incapable of bearing arms as a gentleman ; that he should ride twice to the pillory with his face to the horse's tail, holding the tail in his hand ; that he should be branded with the letter K on his forehead, be whipped

Fines imposed by the Commons.

<sup>1</sup> 6 State Tr. 1296 ; 1 Mod. Rep. 144 ; see report by the Serjeant of a prisoner's discharge, " of course " by a prorogation, 26 L. J. 420.

<sup>2</sup> D'Ewes, 502 ; 1 Hatsell, 233 ; see also Sir E. Coke's statement, 1 C. J. 604.

<sup>3</sup> 1 Cowp. 17.

<sup>4</sup> *Smalley's case*, 1575 ; *Hall's case*, 1580 ; 1 C. J. 112. 125. 126 ; also 7 ib. 531. 591 ; 9 ib. 543. 687. 737 ; 10 ib. 84 ; 12 ib. 255. 256 ; D'Ewes, 366.

<sup>5</sup> 1 C. J. 609, 1 Parl. Hist. 1250.

at the cart's tail, be fined 5000*l.* to the king and be imprisoned in Newgate for life.<sup>1</sup>

The last case of a fine by the Commons occurred in 1666, when a fine of 1000*l.* was imposed upon Thomas White, who had absconded after he had been ordered into the custody of the Serjeant-at-arms.<sup>2</sup>

The modern practice of the Commons is to commit persons to the custody of the Serjeant-at-arms, or to one of His Majesty's prisons during the pleasure of the house; and to keep offenders there until they present petitions praying for their release, and expressing contrition for their offences; <sup>3</sup> or until, upon motion made in the house, it is resolved that they shall be discharged.<sup>4</sup> It is then usual for the parties to be brought to the bar, by the Serjeant with his mace, and, after a reprimand from the Speaker, to be discharged on payment of their fees (see p. 95).<sup>5</sup> But occasionally their attendance at the bar and the reprimand have been dispensed with.<sup>6</sup> A member, if in custody of the Serjeant, is reprimanded at the bar; but, otherwise, in his place.<sup>7</sup>

It is not customary to order a person to be reprimanded unless he be in custody, though there are some examples of a different practice; <sup>8</sup> and orders have been made that the person incriminated do attend to receive a reprimand.<sup>9</sup> When the offence has not been so grave as to cause the commitment of the offender, he is generally directed to be "admonished;" the Serjeant, bearing the mace, standing by whilst the admonition is pronounced.<sup>10</sup> The Speaker's reprimand or admonition is always ordered to be entered in the journals. Where the offence has been slight, or the apology is accepted as satisfactory, even an admonition has been dispensed with; and the house has resolved to proceed no further in the matter (such resolution being

<sup>1</sup> 1 C. J. 619, 3 L. J. 134, Oxford Deb. 355. 369; 2 ib. 107, 1 Parl. Hist. 1259; see also the treatment of Naylor by the Protectorate Parliament, 7 C. J. 465, Palgrave's Oliver Cromwell, 187.

<sup>2</sup> 8 C. J. 690.

<sup>3</sup> It has been customary to order such petitions to be printed and considered on a future day. 97 C. J. 180. 209; 106 ib. 151; 113 ib. 196, 150 H. D. 3 s. 1198; 134 C. J. 381.

<sup>4</sup> 95 C. J. 291. 337; 97 ib. 224.

<sup>5</sup> On the 9th May, 1804, it was "delivered for a rule, that no delinquent is to

be brought in, but by the Serjeant with his mace," 1 C. J. 204; 82 ib. 399; 87 ib. 365; 97 ib. 240; 106 ib. 289.

<sup>6</sup> 75 C. J. 467; 86 ib. 333; 90 ib. 532; 95 ib. 96; 101 ib. 768; 103 ib. 263; 113 ib. 203; 150 H. D. 3 s. 1313. 1404; 134 C. J. 385; 135 ib. 241.

<sup>7</sup> 21 C. J. 872; 45 ib. 516; 93 ib. 316; 147 ib. 167.

<sup>8</sup> 5 Parl. Hist. 910; 82 C. J. 395. 399; 93 ib. 316; 156 ib. 418.

<sup>9</sup> Bidmead's case, 142 C. J. 306.

<sup>10</sup> 87 C. J. 294; 88 ib. 218; 97 ib. 143; 147 ib. 166.

Present  
modes of  
punish-  
ment.

Repri-  
mand and  
admoni-  
tion.

communicated to the person concerned, by the Speaker);<sup>1</sup> or that the person be excused or discharged from further attendance.<sup>2</sup>

Payment of fees was formerly remitted; by order, under special circumstances: <sup>3</sup> but, according to present usage, no order for the payment of fees is made, unless called for by the nature of the offence.<sup>4</sup> Payment of fees.

As no period of imprisonment is named by the Commons, the prisoners committed by them, if not sooner discharged by the house, are immediately released from their confinement on a prorogation, whether they have paid the fees or not. If they were held longer in custody, they would be discharged by the courts upon a writ of habeas corpus.<sup>5</sup> Imprisonment by the Commons concluded by prorogation.

It was formerly the practice to make prisoners receive the judgment of the house, kneeling at the bar: in both houses, however, this practice has long since been discontinued.<sup>6</sup> The discontinuance of this practice arose from the refusal of Mr. Murray to kneel, when brought up to the bar of the House of Commons, on the 4th February, 1750. For this refusal he was declared "guilty of a high and most dangerous contempt of the authority and privilege of this house;" was committed close prisoner to Newgate, and not allowed the use of pen, ink and paper.<sup>7</sup> It appears that there had previously been only one other instance of such a refusal to kneel.<sup>8</sup> Prisoners kneeling at the bar.

<sup>1</sup> 77 C. J. 432, 7 H. D. 2 s. 1668.

<sup>2</sup> 77 C. J. 432. 433; 118 C. J. 106.

<sup>3</sup> 58 C. J. 221; 74 ib. 192; 80 ib. 470; 83 ib. 199; 85 ib. 465; 90 ib. 532; 106 ib. 147; 107 ib. 301; 108 ib. 595, &c.

<sup>4</sup> See last three cases, 113 C. J. 208; 114 ib. 342; 134 ib. 385.

<sup>5</sup> Lord Denman's judgment in *Stockdale v. Hansard* (1839), Proceedings printed by the Commons, 1839, Parl. Pap. (H. C.) sess. 1839, No. 283, p. 142. This

law never extended to an adjournment, even when it was in the nature of a prorogation; see 10 C. J. 537.

<sup>6</sup> Resolution 16th March, 1772, 33 C. J. 594.

<sup>7</sup> 14 Parl. Hist. 894; 1 Walpole's Memoirs of George II. 15.

<sup>8</sup> Report of Precedents, 26 C. J. 48. There had, however, been similar cases before the Lords, 3 Parl. Hist. 844. 880.

## CHAPTER IV.

## PRIVILEGE OF FREEDOM OF SPEECH.

**Necessity of freedom of speech.** FREEDOM of speech is a privilege essential to every free council or legislature. Its principle was well stated by the Commons, at a conference on the 11th December, 1667: "No man can doubt," they said, "but whatever is once enacted is lawful: but nothing can come into an Act of Parliament, but it must be first affirmed or propounded by somebody: so that if the Act can wrong nobody, no more can the first propounding. The members must be as free as the houses; an Act of Parliament cannot disturb the state; therefore the debate that tends to it cannot; for it must be propounded and debated before it can be enacted."<sup>1</sup>

**Confirmed by law of Parliament.** This important privilege has been recognized and confirmed as part of the law of the land. According to Elsyng, the "Commons did oftentimes, under Edward III., discuss and debate amongst themselves many things concerning the king's prerogative, and agreed upon petitions for laws to be made directly against his prerogative, as may appear by divers of the said petitions; yet they were never interrupted in their consultations, nor received check for the same, as may appear also by the answers to the said petitions."<sup>2</sup>

**Haxey's case.** In the 20th Richard II. (1396-7), however, a case occurred in which this ancient privilege was first violated, and afterwards signally confirmed. Haxey, a member of the Commons, having displeased the king, by offering a bill for reducing the excessive charge of the royal household, was condemned in Parliament as a traitor. But on the accession of Henry IV., Haxey exhibited a petition to the king in Parliament to reverse that judgment, as being "against the law and custom which had been before in Parliament;" and the judgment was reversed and annulled accordingly by the king, with the advice and assent of all the lords spiritual and temporal.<sup>3</sup> This was unquestionably an acknowledgment of the privilege, by the highest judicial authority—the king and the House of Lords; and

<sup>1</sup> 12 L. J. 166.<sup>2</sup> Elsyng, 177.<sup>3</sup> 3 Rot. Parl. 430.

in the same year the Commons took up the case of Haxey, and in a petition to the king affirmed "that he had been condemned against the law and course of Parliament, and in annihilation of the customs of the Commons;" and prayed that the judgment might be reversed, "as well for the furtherance of justice as for the saving of the liberties of the Commons."<sup>1</sup> To this the king also assented, with the advice and assent of the lords spiritual and temporal; and thus the whole legislature agreed that the judgment against Haxey, in derogation of the privileges of Parliament, "should be annulled and held to be of no force or effect."<sup>2</sup>

Again, in the 4th Henry VIII. (1512), Mr. Strode, a member of the House of Commons, was prosecuted in the Stannary Court, for having proposed certain bills to regulate the tinnerns in Cornwall, and was fined and imprisoned in consequence.<sup>3</sup> Upon which an Act was passed,<sup>4</sup> which, after stating that Strode had agreed with others of the Commons in putting forth bills, "the which here, in this High Court of Parliament, should and ought to be communed and treated of," declared the proceedings of the Stannary Court to be void, and further enacted that all suits and other proceedings against Richard Strode, and against every other member of the present Parliament, or of any Parliament thereafter, "for any bill, speaking, or declaring of any matter concerning the Parliament, to be communed and treated of, be utterly void and of none effect." As the proceedings which had already taken place against Strode were declared to be void, it is evident that freedom of speech was then admitted to be a privilege of Parliament, and was not at that time first enacted; and that the statute was intended to have a general operation in future, and to protect all members, of either house, from any question on account of their speeches or votes in Parliament.

Thirty years afterwards the petition of the Commons to the king, at the commencement of the Parliament, appears for the first time to have included this privilege amongst those prayed for of the king,<sup>5</sup> which has since become the established practice.

<sup>1</sup> "Si bien en accomplissement de droit, come pur salvation des libertés de lez ditz communes."

<sup>2</sup> 3 Rot. Parl. 434; also the case of Thomas Young, 33rd Henry VI., 5 Rot. Parl. 337.

<sup>3</sup> 4 Parl. Hist. 85, 1 Hatsell, 85.

<sup>4</sup> 4 Hen. VIII. c. 8.

<sup>5</sup> The petition 33rd Henry VIII. (1541), by Thomas Moyle, Speaker, Elsynge, 176. See also the Commons' petition for freedom of speech, and King Henry IV.'s answer, and his subsequent confirmation of the right of free discussion in Parliament in the second and ninth years of his reign, 3 Rot. Parl. 456. 611; 4 Co. Inst. 8.

Petition of  
the Com-  
mons.

Interpre-  
tation of  
the privi-  
lege.

Notwithstanding the repeated recognition of this privilege, the Crown and the Commons were not always agreed upon its limits. In reply to the usual petition of the Speaker, Sir Edward Coke, in 1593, the lord keeper said, "Liberty of speech is granted you, but you must know what privilege you have; not to speak every one what he listeth, or what cometh in his brain to utter; but your privilege is 'aye' or 'no.'"<sup>1</sup> In 1621, the Commons, in their protestation, defined their privilege more consistently with its present limits. They affirmed "that every member hath freedom from all impeachment, imprisonment, or molestation, other than by censure of the house itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business."

Violations  
of the  
privilege.

It is needless to recount how frequently this privilege was formerly violated by the power of the Crown. The Act of the 4th Henry VIII. extended no further than to protect members from being questioned, in other courts, for their proceedings in Parliament: but its principle should equally have saved them from the displeasure of the Crown. The cases of Mr. Strickland, in 1571, of Mr. Cope, Mr. Wentworth and others, in 1586, and of Sir Edwin Sandys, in 1621,<sup>2</sup> will serve to remind the reader how imperfectly members were once protected against the unconstitutional exercise of prerogative.

Sir J. Eliot  
and  
others.

The last occasion on which the privilege of freedom of speech was directly impeached was in the celebrated case of Sir John Eliot, Denzil Hollis and Benjamin Valentine, against whom a judgment was obtained in the King's Bench, in the 5th Charles I., for their conduct in Parliament. On the 8th July, 1641, the House of Commons declared all the proceedings in the King's Bench to be against the law and privilege of Parliament.<sup>3</sup> The judgment had been given against the privilege of Parliament, upon the false assumption that the Act of the 4th Henry VIII. had been simply a private statute for the relief of Strode, and had no general operation. To condemn this construction of the plain words of the statute, the Commons resolved, 12th and 13th November, 1667, "That the Act of Parliament in the 4th Henry VIII., commonly intituled 'An Act concerning Richard Strode,' is a general law," extending to all members of both houses of Parliament; "and is a declaratory law of the ancient

<sup>1</sup> 1 Parl. Hist. 862.

<sup>2</sup> D'Ewes, 166, 410; 4 Parl. Hist. 153; 1 C. J. 635; 1 Hatsell, 79. 136.

137.

<sup>3</sup> 2 C. J. 203, 3 State Tr. 235.



and necessary rights and privileges of Parliament," and "That the judgment given, 5 Car., against Sir John Eliot, Denzil Hollis, and Benjamin Valentine, in the King's Bench, was an illegal judgment, and against the freedom and privilege of Parliament." The Lords, at a conference agreed to the resolutions of the Commons; and, upon a writ of error, the judgment of the Court of King's Bench was reversed by the House of Lords, on 15th April, 1668.<sup>1</sup>

This would have been a sufficient recognition by law of the privilege of freedom of speech: but a further and last confirmation was reserved for the Revolution of 1688. By the 9th Article of the Bill of Rights it was declared, "That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament."<sup>2</sup>

But, although by the ancient custom of Parliament, as well as by the law, a member may not be questioned out of Parliament, he is liable to censure and punishment by the house itself, of which he is a member. The cases in which members have been called to account and punished for offensive words spoken before the house, are too numerous to mention.<sup>3</sup> Some have been admonished, others imprisoned, and in the Commons some have been expelled.<sup>4</sup> Members using unparliamentary language are promptly called to order, and generally satisfy the house with an explanation or apology; if not, they will be dealt with under standing order No. 18 or 20, or punished as the house may think fit.<sup>5</sup>

If a member should say nothing disrespectful to the house or the chair, or personally opprobrious to other members, or in violation of other rules of the house, he may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation. In the case of an action brought in the Irish courts against a member of the House of Commons for words spoken in the house, the court, being satisfied that those words constituted the cause of action, ordered that the writ and statement should be taken off the records of the court, the court having no jurisdiction in the matter.<sup>6</sup>

Its recognition by statute.

Offensive words dealt with by Parliament.

S. O. 18. 20, Appendix I.

Speeches in parliament not actionable.

<sup>1</sup> 9 C. J. 19. 25, 12 L. J. 166. 223.

<sup>4</sup> 1 C. J. 524.

<sup>2</sup> 1 Will. & Mary, sess. 2, c. 2.

<sup>5</sup> Case of Mr. O'Donnell, 137 C. J. 323.

<sup>3</sup> 4 L. J. 475; 5 ib. 77; 9 C. J. 642; 11 ib. 581.

328.

<sup>6</sup> Dillon v. Balfour, 20 L. R. Ir. 600.

Privilege  
not extended to  
speeches  
separately  
published.

If a member publishes his speech, his printed statement becomes a separate publication, unconnected with any proceedings in Parliament. This view of the law has been established by two remarkable cases.

Lord  
Abing-  
don's case.

In 1795, an information was filed against Lord Abingdon for a libel. He had accused his attorney of improper professional conduct, in a speech delivered in the House of Lords, which he afterwards published in several newspapers at his own expense. Lord Abingdon pleaded his own case in the Court of King's Bench, and contended that he had a right to print what he had, by the law of Parliament, a right to speak : but Lord Kenyon said, that " a member of Parliament had certainly a right to publish his speech, but that speech should not be made a vehicle of slander against any individual ; if it was, it was a libel." The court gave judgment that his lordship should be imprisoned for three months, pay a fine of 100*l.* and find security for his good behaviour.<sup>1</sup>

Mr.  
Creevey's  
case.

In 1813, a much stronger case occurred. Mr. Creevey, a member of the House of Commons, had made a charge against an individual in the house, and incorrect reports of his speech having appeared in several newspapers, Mr. Creevey sent a correct report to the editor of a newspaper, with a request that he would publish it. Upon an information filed against him, the jury found the defendant guilty of libel, and the King's Bench refused an application for a new trial.<sup>2</sup> Mr. Creevey, who had been fined 100*l.*, complained to the house of the proceedings of the King's Bench : but the house refused to admit that they were a breach of privilege.<sup>3</sup>

Mr.  
Wason's  
case.

The Lord Chief Justice of England, in a more recent case, further laid it down, that " if a member publishes his own speech, reflecting upon the character of another person, and omits to publish the rest of the debate, the publication would not be fair, and so would not be privileged," but that a fair and faithful report of the whole debate would not be actionable.<sup>4</sup>

Rex v.  
Wright.

The privilege which protects debates extends also to reports and other proceedings in Parliament. In the case of *Rex v. Wright*,<sup>5</sup> Mr. Horne Tooke applied for a criminal information against a bookseller for publishing the copy of a report made by a Commons'

<sup>1</sup> 1 Esp. 228.

<sup>2</sup> See Lord Ellenborough's judgment,  
1 M. & S. 278.

<sup>3</sup> 68 C. J. 704, 26 H. D. 1 s. 898.

<sup>4</sup> *Wason v. Walter* (1868), 4 L. R. Q. B.  
at p. 89.

<sup>5</sup> 8 Term. Rep. 293.

committee, which appeared to imply a charge of high treason against Mr. Tooke, after he had been tried for that crime and acquitted. The rule, however, was discharged by the court, partly because the report did not appear to bear the meaning imputed to it, and partly because the court would not regard a proceeding of either house of Parliament as a libel.

By the Parliamentary Papers Act, 1840 (3 & 4 Vict..c. 9), passed in consequence of the decision of the Court of Queen's Bench in the case of *Stockdale v. Hansard* (see p. 134), it was enacted that proceedings, criminal or civil, against persons for the publication of papers printed by order of either house of Parliament, shall be immediately stayed, on the production of a certificate, verified by affidavit, to the effect that such publication is by order of either house of Parliament. Proceedings are also to be stayed, if commenced on account of the publication of a copy of a parliamentary paper, upon the verification of the correctness of such copy; and in proceedings commenced for printing any extract from, or abstract of, a parliamentary report or paper, the defendant may give the report in evidence under the general issue, and prove that his own extract or abstract was published *bonâ fide* and without malice; and if such shall be the opinion of the jury, a verdict of not guilty will be entered.<sup>1</sup>

Publica-  
tion of  
parlia-  
mentary  
papers.

<sup>1</sup> The action of *Harlow v. Hansard* was stayed 14th July, 1845, by Mr. Justice Wightman in chambers, on the production of the Speaker's certificate. In the case of *Houghton and others v. Plimsoll*, tried at Liverpool, 1st April, 1874, Baron Amphlett directed the jury that the report of a Royal Commission, presented to Parliament in a printed form, came within the provisions of the Act, "since it was a report which had been adopted by Parliament, and of which a distribution

of copies had been ordered by Parliament." This judgment was followed by Mr. Justice Darling in *Mangena v. Edward Lloyd, Limited*, [1908] 98 L. T. 640, an action for libel brought in respect of a statement contained in an extract from a paper presented to Parliament by command of His Majesty. The decision in this case, the proceedings in which were presented to both houses (see Cd. 4403), was followed in *Mangena v. Wright*, [1909] 2 K. B. 958.

## CHAPTER V.

## FREEDOM FROM ARREST OR MOLESTATION.

Antiquity  
of the  
privilege.

THE privilege of freedom from arrest or molestation is of great antiquity and dates, probably, from the first existence of parliaments or national councils in England. By some writers its recognition by the law has been traced so far back as the time of Ethelbert, at the end of the sixth century, in whose laws it is said, "If the king call his people to him (*i.e.* in the *witena-gemót*), and any one does an injury to one of them, let him pay a fine."<sup>1</sup> Blackstone has shown that it existed in the reign of Edward the Confessor, in whose laws we find this precept, "*Ad synodos venientibus, sive summoniti sint, sive per se quid agendum habuerint, sit summa pax ;*" and so, too, in the old Gothic constitutions, "*Extenditur hæc pax et securitas ad quatuordecim dies, convocato regni senatu.*"<sup>2</sup> In later times there are various precedents explanatory of the nature and extent of this privilege and of the mode in which it was sustained. From these it will be seen that not only are the persons of members of both Houses of Parliament free from arrest on mesne process or in execution, but that formerly the same immunity was enjoyed in regard to their servants and their property. The privilege was strained still further, and even claimed to protect members and their servants from all civil actions or suits, during the time over which privilege was supposed to extend. The privilege of freedom from arrest has also been construed to discharge members and their servants from all liability to answer subpoenas in other courts and to serve on juries, and in some cases to relieve them from commitments by courts of justice.

Privileges  
enumerated.

These various immunities have undergone considerable changes and restrictions ; and being now defined, for the most part, with tolerable certainty, they will be best understood by considering them in the following order : 1. Privilege of members and their servants

<sup>1</sup> Wilkins, *Leges Anglo-Sax.* p. 2 ;  
Hallam, *Mid. Ages*, ii. 231 ; Kemble,  
*Saxons*, ii. 33.

<sup>2</sup> 1 Bl. Com. 165 ; Stiernhook, *de Jure Sueonum et Gothorum* (1672).

from arrest and distress, and the mode of enforcing it. 2. Their protection from being impleaded in civil actions. 3. Their liability to be summoned by subpoena, or to serve on juries. 4. Their privilege in regard to commitments by legal tribunals. 5. Privilege of witnesses and others in attendance on Parliament. It may, however, be stated at once, that although many cases that will be given apply equally to members and to their servants, according to the privilege existing in those times, the latter have at present no privilege whatever (see p. 106). These cases, though at variance with modern usage, could not be omitted consistently with a complete view of the privilege of freedom from arrest and molestation.

So far back as the 19th Edward I. (1290), in answer to a petition of the Master of the Temple for leave to distrain for the rent of a house held of him by the Bishop of St. David's, the king said, "It does not seem fit that the king should grant that they who are of his council should be distrained in time of Parliament." The privilege was also acknowledged very distinctly by the Crown in the case of the Prior of Malton, in the 9th Edward II. (1315).<sup>1</sup> The freedom, both of the Lords and Commons, and their servants, from all assaults or molestation, when coming to Parliament, remaining there, and returning thence, was distinctly recognized in the case of Richard Chedder, a member, by Statute 5 Hen. IV. c. 6, and again by another Statute, 11 Hen. VI. c. 11. This privilege, however, was not created by statute. In the 17th Edward IV. (1477), the Commons affirmed, in Atwyll's case, that the privilege, "that they should not be impleaded in any action personal," had existed "whereof tyme that mannys mynde is not the contrarie;"<sup>2</sup> thus placing it on the ground of prescription, and not on the authority of statutes then in force. The only exception to the recognition of this privilege was in the extraordinary case of Thorpe, the Speaker of the Commons, who was imprisoned in 1452, under execution from the Court of Exchequer, at the suit of the Duke of York: and who was retained in prison by the order of the House of Lords, although the judges advised them that Thorpe was entitled to his release (see p. 127).<sup>3</sup> The case, however, has been regarded as irregular and "begotten by the iniquity of the times."<sup>4</sup>

Freedom  
from ar-  
rest and  
distress of  
goods.

<sup>1</sup> 1 Rot. Parl. 61; 4 Co. Inst. 24; 1 Hatsell, 12. IV.'s reply to the Commons' petition of the 5th year of his reign, 3 ib. 541.

<sup>2</sup> 6 Rot. Parl. 191.

<sup>4</sup> 1 C. J. 546.

<sup>3</sup> 5 Rot. Parl. 239. See also Henry

Release of  
members  
from  
custody.

Down to 1543, although the privilege had been recognized by statute, by declaration of both houses, by the frequent assent of the king, and by the opinions of the judges, the Commons did not deliver their members out of custody by their own authority: but when the members were in execution, in order to save the rights of the plaintiff, they obtained special statutes to authorize the lord chancellor to issue writs for their release; and when confined on mesne process only, they were delivered by a writ of privilege issued by the lord chancellor.<sup>1</sup> At length, in 1543, the Commons, for the first time, vindicated the privilege of Parliament, and acted independently of any other power. George Ferrers, a member, was arrested in London, by a process out of the King's Bench, at the suit of one White, as surety for the debt of another. The house, on hearing of his arrest, ordered the Serjeant to go to the Compter and demand his delivery. The Serjeant was resisted by the city officers, who were protected by the sheriffs; and he was obliged to return without the prisoner. The Commons laid their case before the Lords, "who, judging the contempt to be very great, referred the punishment thereof to the order of the Commons' house." They ordered the Serjeant to repair to the sheriffs, and to require the delivery of Ferrers, without any writ or warrant. The lord chancellor had offered them a writ of privilege, but they refused it, "being of a clear opinion that all commandments and other acts proceeding from the neather house were to be done and executed by their Serjeant without writ, only by show of his mace, which was his warrant." The sheriffs, in the mean time, had surrendered the prisoner: but the Serjeant, by order of the house, required their attendance at the bar, together with the clerks of the Compter, and White, the plaintiff; and they were all committed for their contempt.<sup>2</sup> The practice of releasing members by a writ of privilege was still continued, notwithstanding the course pursued in the case of Ferrers: but henceforward no such writ was suffered to be obtained without a warrant previously signed by the Speaker.

Cases in  
the Lords.

The principal cases in the Lords, up to this period, show an

<sup>1</sup> Lark's case, "*Le Roi, par advis des seigneurs espirituelx et temporelx, et a les especiales requestes des communes*," 4 Rot. Parl. 357; also 5 ib. 374; Atwyll's case, 6 ib. 191; Parr's case, 5 ib. 111; Hyde's case, 6 ib. 160; Thorpe's case, 5 ib. 239; Sadcliff's case, 1 Hatsell, 51.

<sup>2</sup> See also the king's statement and the lord chief justice's declaration confirming the Commons' privileges, 1 Hollingshed, 824; 1 Hatsell, 57. See also Smalley's case (1575), 1 C. J. 108; see also the cases of Mr. Fitzherbert (1592) and Mr. Neale, D'Ewes, 482. 514. 518. 520; 1 Hatsell, 107.

uncertainty in their practice similar to that of the Commons; privileged persons being sometimes released immediately, and sometimes by writs of privilege. On the 1st December, 1585, they ordered to be enlarged and set at liberty James Diggs, servant to the Archbishop of Canterbury, "by virtue of the privilege of this court;" and again, in the same year, a servant of Lord Leicester; and in 1597, the servants of Lord Chandois and the Archbishop of Canterbury. In the two last cases the officers who had arrested the prisoners were committed by the house.<sup>1</sup>

The modifications of the ancient privilege which have been effected by statute, and the modern practice of Parliament in protecting members from arrest, must now be considered. In 1603, the case of Sir Thomas Shirley occasioned a more distinct recognition of the privilege by statute, and an improvement in the law. He had been imprisoned in the Fleet, in execution, before the meeting of Parliament, and the Commons first tried to bring him into the house by habeas corpus, and then sent their Serjeant to demand his release. The warden refused to give up his prisoner, and was committed to the Tower, and to the cell therein called "Little Ease," for his contempt. At length the warden delivered up the prisoner, and was discharged, after a reprimand.<sup>2</sup> So far the privileges of the house were satisfied: but there was still a legal difficulty to be overcome, that had been common to all cases in which members were in execution, viz. that the warden was liable to an action of escape, and the creditor had lost his right to an execution.<sup>3</sup> In former cases a remedy had been provided by a special Act, and the same expedient was now adopted: but in order to provide for future cases of a similar kind, a general Act, 1 Jas. I. c. 13, was passed, which, while it recognized the privilege of freedom from arrest, the right of either house of Parliament to set a privileged person at liberty, and the right to punish those who make or procure arrests, enacted that after such time as the privilege of that session in which privilege is granted shall cease, parties may sue forth and execute a new writ; and that no sheriff, &c., from whose arrest or custody persons shall be delivered by privilege, shall be chargeable with any action. Although the privilege of either house of Parliament was admitted to entitle

<sup>1</sup> 2 L. J. 66. 93. 201. 205; see also the cases of William Hogan, released by the order of the house; and of Vaughan, released by a writ of privilege, 2 L. J. 230. 238. 241; D'Ewes, 603. 607.

<sup>2</sup> 1 C. J. 155, *et seq.*; 5 Parl. Hist. 113, &c.; 1 Hatsell, 157.

<sup>3</sup> See 1 C. J. 173. 195; and Collection of Precedents, 10 ib. 401.

a prisoner to his release, the manner of releasing him was, during the 17th century, still indefinite, whether by warrants for a writ of privilege or a writ of habeas corpus, or by the order of the house.<sup>1</sup> During the same period also, when the property of peers or of their servants was distrained, the Lords were accustomed to interfere by their direct authority, as in 1628 ;<sup>2</sup> but privilege did not attach to property held by a peer as a trustee only.<sup>3</sup> In cases of arrest on mesne process, the practice of releasing the prisoners directly by a warrant, or by sending Black Rod or the Serjeant, in the name of the house, to demand them,<sup>4</sup> was continually adopted. At length, in the year 1700, an Act was passed,<sup>5</sup> which, while it maintained the privilege of freedom from arrest with more distinctness than the 1 Jas. I., made the goods of privileged persons liable to distress infinite and sequestration, between a dissolution, or prorogation, and the next meeting of Parliament, and during adjournments for more than fourteen days. In suits against the king's immediate debtors, execution against members was permitted even during the sitting of Parliament, and the privilege of freedom from arrest in such suits was not reserved to servants. Again, by the 2 & 3 Anne, c. 12, executions for penalties, forfeitures, &c., against privileged persons, being employed in the revenue or any office of trust, were not to be stayed by privilege. Freedom from arrest, however, was still maintained in such cases for the members of both houses but not for their servants.

Servants' privilege discontinued.

By the Parliamentary Privilege Act, 1770 (10 Geo. III. c. 50), a very important limitation of the freedom of arrest was effected. Down to that time the servants of members had been entitled to all the privileges of their masters, except as regards the limitations effected by the last two statutes : but by the 3rd section of the Act of 1770, the privilege of members to be free from arrest upon all suits, authorized by the Act, was expressly reserved ; while no such reservation was introduced in reference to their servants. Thus, without any distinct abrogation of the privilege, it was, in fact, put an end to, as executions were not to be stayed in their favour, and their freedom from arrest was not reserved.

Present mode of releasing arrested members.

By these several statutes the freedom of members from arrest in

<sup>1</sup> 2 L. J. 270. 296. 299. 302. 588 ; 3 ib. 30 ; 4 ib. 654 ; 8 ib. 635. 639 ; 1 C. J. 820 ; 9 ib. 411 ; 1 Hatsell, 167.

<sup>2</sup> Cases of Lords Warwick and Montague, 3 L. J. 776. 777 ; 10 ib. 611.

<sup>3</sup> 12 L. J. 194. 390 ; 14 ib. 36. 78 ; 16

ib. 294 ; 22 ib. 412.

<sup>4</sup> Bassett's case, 1 C. J. 807 ; 4 L. J. 654 ; 8 ib. 577. 601 ; Boteler's case, 17 C. J. 6.

<sup>5</sup> 12 & 13 Will. III. c. 3, afterwards extended by 11 Geo. II. c. 24.



civil cases has become a legal right rather than a parliamentary privilege. The arrest of a member in a civil cause is, therefore, irregular *ab initio* and he may be discharged immediately, upon motion in the court from which the process issued.<sup>1</sup> For the same reason writs of privilege have been discontinued. In 1707, a few years after the passing of the Act 12 & 13 Will. III. c. 3, the Serjeant was sent with the mace to the warden of the Fleet, who obeyed the orders of the house, and discharged Mr. Asgill, a member then in execution.<sup>2</sup> Peers, peeresses and members are now discharged directly by order or warrant, and the parties who cause the arrest are liable to censure and punishment, as in the case of the Baroness Le Cale, in 1811; and Viscount Hawarden, in 1828.<sup>3</sup> In 1807, Mr. Mills had been arrested on mesne process, and was afterwards elected. The house determined that he was entitled to privilege, and ordered him to be discharged out of the custody of the marshal of the King's Bench. In 1819, Mr. Christie Burton had been elected for Beverley, but being in custody on execution, and also on mesne process, was unable to attend his service in Parliament. The house determined that he was entitled to privilege, and ordered his discharge from the custody of the warden of the Fleet. An action for his escape was brought against the warden by the assignees of a creditor of Mr. Burton, who were declared guilty of a breach of privilege, and ordered to attend the house.<sup>4</sup>

It now only remains to inquire what is the duration of the privilege of freedom from arrest; and it is singular that this important point has never been expressly defined by Parliament. The person of a peer "is for ever sacred and inviolable" by the privilege of peerage. <sup>Duration of privilege.</sup> Peers. This immunity rests upon ancient custom, and was recognized by the Acts 12 & 13 Will. III. c. 3 and 2 & 3 Anne, c. 12. It would seem to have been an ancient feudal privilege of the barons, the law assuming that there would always be, upon the demesnes of their baronies, sufficient to distrain for the satisfaction of any debt.<sup>5</sup> Peeresses <sup>Peeresses.</sup> are entitled to the same privilege as peers, whether they be peeresses by birth, by creation, or by marriage: <sup>6</sup> but if a peeress by marriage

<sup>1</sup> See Colonel Pitt's case (1734), 2 Stra. 985.

<sup>2</sup> 15 C. J. 471.

<sup>3</sup> 48 L. J. 60. 63; 60 ib. 34 (and Report of Precedents, 28).

<sup>4</sup> 62 C. J. 654; 74 ib. 44; 75 ib. 286.

<sup>5</sup> 1 Bl. Com. 165; West. Inq. 27.

<sup>6</sup> Countess of Rutland's case, 6 Co. Rep. 52; cases of Lady Purbeck, 1625; Lady Della Warr, 1642; Lady D'Acre, 1660; Lady Petre, 1664; Countess of Huntingdon, 1676; Countess of Newport, 1699; Lady Abergavenny, 1727; 60 L. J. 28-31.

should afterwards intermarry with a commoner, she forfeits her privilege. It is also ordered and declared by the Lords, that privilege of Parliament shall not be allowed to minor peers, noblewomen, or widows of peers (saving their right of peerage).<sup>1</sup>

Representative  
peers.

By the 23rd Article of the Act of Union with Scotland, the sixteen representative peers are allowed all the privileges of the peers of the Parliament of Great Britain; and all other peers and peeresses of Scotland, though not chosen, enjoy the same privileges. In the same manner, by the Act of Union with Ireland, the peers and peeresses of Ireland are entitled to the same privileges as the peers and peeresses of Great Britain.<sup>2</sup>

Authorities as to  
the duration of  
privileges.

The Lords, under standing orders Nos. 57 and 60, claim privileges for themselves "within the usual times of privileges of Parliament," and for their servants, for twenty days before and after each session. With regard to members of the House of Commons, "the time of privilege" has been repeatedly mentioned in statutes, but never explained. It is stated by Blackstone and others, and has been the general opinion (founded, probably, upon the ancient law and custom, by which writs of summons for a Parliament were always issued at least forty days before its appointed meeting), that the privilege of freedom from arrest remains with a member of the House of Commons "for forty days after every prorogation, and forty days before the next appointed meeting;"<sup>3</sup> and this extent of privilege has been allowed by the courts of law, on the ground of usage and universal opinion. Thus in the case of a member who had been, by a judge's order, allowed his privilege, extending to forty days, the chief baron, on a motion for rescinding the order, maintained the privilege, and stated as the judgment of the court that "the period of forty days before and after the meeting of Parliament has for about two centuries, at least, been considered either a convenient time or the actual time to be allowed. Such has been the usage, the universally prevailing opinion on the subject; and such, we think, is the law"<sup>4</sup> (see also p. 119).

<sup>1</sup> Co. Litt. 16 b.; Bac. Abr. vi. 542; Lords' standing order No. 58; 11 L. J. 298; 15 ib. 241; see also 12 ib. 714; 13 ib. 67. 79. 80. 659.

<sup>2</sup> 2 Stra. 990; 60 L. J. 28; case of Viscount Hawarden, an Irish Peer, 60 ib. 15; Rep. Com. of Privileges, 60 ib. 28, 18 H. D. 2 s. 69, Colchester, iii. 544.

<sup>3</sup> 1 Bl. Com. 165. The right of franking letters, formerly enjoyed by members, was by Act granted for the above-mentioned forty days. For a history of this right, see 22 C. J. 462.

<sup>4</sup> Goudy v. Duncombe, (1847) 1 Exch. at p. 435.

It has been determined by the courts of law, that the privilege, After dissolution. even after a dissolution, is still enjoyed for a convenient and reasonable time for returning home.<sup>1</sup> What this convenient time may be, has never been determined; but the general claim of exemption from arrest, *eundo et redeundo*, extends as well to dissolutions as to prorogations, as no distinction is made between them.

These cases apply to arrests made after the privilege has accrued: Members in execution before their election. but the effect of the election of a person already in execution still remains to be considered. In Thorpe's case the judges excepted from privilege the case of "a condemnation had before the Parliament:" but their opinion has not been sustained by the judgment of Parliament itself. Unless a member has incurred some legal disability, or has subjected himself to processes more stringent than those which result from civil actions, it has been held that his service in Parliament is paramount to all other claims. Thus in 1677, Sir Robert Holt was discharged, although he had been "taken in execution out of privilege of Parliament;" and, not to mention intermediate cases, or any which are of doubtful authority, Mr. Christie Burton obtained his release in 1819, although he had been in the custody of the warden of the Fleet before his election.<sup>2</sup>

A person succeeding to a peerage while under arrest, is entitled to his discharge in virtue of his privilege. Persons under arrest becoming peers. On the 1st January, 1849, Lord Harley having succeeded, by the death of his father, to the earldom of Oxford, applied to a judge in chambers (Mr. Baron Platt), for his discharge from the Queen's Prison. It was submitted that he was not entitled to privilege until he had taken his seat as a peer: but this position could not be supported by any authorities, and the earl was ordered to be discharged.<sup>3</sup> It has been decided by the Lords, however, that a peer is not entitled to privilege when he has not qualified himself to sit, by taking the oaths.<sup>4</sup>

As a consequence of the immunity of a member of Parliament, it has been held that he cannot be admitted as bail; for not being liable Members not admitted as bail. to attachment, by reason of his privilege, he cannot be effectually proceeded against, in the event of the recognizances being forfeited.<sup>5</sup>

<sup>1</sup> Barnard v. Mordaunt, (1754) 1 Keny. 125.

<sup>2</sup> 9 C. J. 411; see Reports of Precedents, 10 C. J. 401; 62 ib. 642. 653. 654; 2 Hatsell, 38; 74 C. J. 44; 75 ib. 230.

<sup>3</sup> McCabe v. Lord Harley.

<sup>4</sup> 15 L. J. 91; 21 ib. 327.

<sup>5</sup> Graham v. Sturt, (1812) 4 Taunt. 249; Burton v. Atherton, (1816) 2 Marsh. 232; Duncan v. Hill, (1822) 1 Dow. & Ry. (K. B.) 126; and case of Mr. Feargus O'Connor, who offered himself as bail for Mr. Ernest Jones, 11th June, 1848, at Bow Street.

Impleading of members stayed by writ of supersedeas or by letter.

The privilege of not being impleaded<sup>1</sup> was formerly maintained, as, for instance, during 8th Edward II., by the issue of writs of supersedeas to the justices of assize, to prevent actions from being maintained against members in their absence, by reason of their inability to defend their rights while in attendance upon the Parliament.<sup>2</sup> At the beginning of the reign of James I., another practice was adopted. Instead of resorting to writs of supersedeas, the Speaker was ordered to stay suits by a letter to the judges,<sup>3</sup> and sometimes by a warrant to the party also;<sup>4</sup> and the parties and their attorneys who commenced the actions were brought, by the Serjeant, to the bar of the house.<sup>5</sup>

Limitations of the privilege by statute.

The privilege insisted upon in this manner continued until the end of the seventeenth century, when it underwent a considerable limitation by statute. The Act, 12 & 13 Will. III. c. 3, enacted that any person might commence and prosecute actions against any peer, or member of Parliament, or their servants, or others entitled to privilege, in the court at Westminster, and the duchy court of Lancaster, immediately after a dissolution or prorogation, until the next meeting of Parliament, and during any adjournment for more than fourteen days; and that during such times the court might give judgment and award execution. Soon afterwards, it was enacted, by the 2 & 3 Anne, c. 12, that no action, suit, process, proceeding, judgment, or execution, against privileged persons, employed in the revenue, or any office of public trust, for any forfeiture, penalty, &c., should be stayed or delayed by or under colour or pretence of privilege of Parliament. The Act of William III. had extended only to the principal courts of law and equity: but by the Parliamentary Privileges Act, 1737 (11 Geo. II. c. 24), all actions in relation to real and personal property were allowed to be commenced and prosecuted in the recess and during adjournments of more than fourteen days, in any court of record. Still more important limitations of the privilege were effected by the Parliamentary Privilege Act, 1770, whereby any person may

<sup>1</sup> The case of Bogo do Clare, formerly cited as the earliest recorded case of the privilege of not being impleaded, turned on service of a citation in a privileged place (see p. 81).

<sup>2</sup> 1 Hatsell, 6. 7. 8. For proceedings with regard to issue of writs of supersedeas in 1588, see D'Ewes, 436.

<sup>3</sup> 1 C. J. 286. 381. 421. 525.

<sup>4</sup> 1 C. J. 804.

<sup>5</sup> 1 C. J. 304. For a refusal of the judges to obey the Speaker's letter, see Prynne, 4th Register, 810; 1 C. J. 861; 1 Hatsell, 184. 185. For cases in which members waived their privilege and upon petitions from the parties suits were allowed to proceed, see 1 C. J. 378. 421. 595, &c.; 10 ib. 280. 300. 596; 11 ib. 557, &c.

at any time commence and prosecute an action or suit in any court of law against peers or members of Parliament and their servants ; and no such action or process shall be interfered with under any privilege of Parliament. It is also, however, enacted that nothing in the Act should subject the person of any member of Parliament to arrest or imprisonment. Under this Act, and under the Acts 45 Geo. III. c. 124, and 47 Geo. III. sess. 2, c. 40, members of Parliament may be coerced by every legal process, except the attachment of their bodies. By section 128 of the Bankruptcy Act, 1914, persons having privilege of Parliament are subject to the processes of the court.

The claim to resist subpoenas upon the same principle as other personal privileges, viz. the paramount right of Parliament to the attendance and service of its members, was maintained in former times.<sup>1</sup> Of late years, so far from withholding the attendance of members as witnesses in courts of justice, the Commons grant leave of absence to their members on the ground that they have been summoned as witnesses,<sup>2</sup> and have admitted the same excuse for defaulters at calls of the house.<sup>3</sup> But although this claim of privilege is not now enforced as regards other courts, one house will not permit its members to be summoned by the other, without a message desiring his attendance, or without the consent of the member whose attendance is required (see p. 523) ; and it may be doubtful whether the house would not protect a member served with a subpoena, from the legal consequences of non-attendance in a court of justice, if permission had not been previously granted for his attendance.<sup>4</sup>

No officer of either house should be served with a subpoena to give evidence concerning any proceedings in Parliament, or to produce documents in his custody, until leave has been given to him to attend (see p. 527).<sup>5</sup>

As the withdrawal of a witness may affect the administration of justice, the privilege has properly been waived : but the service of members upon juries not being absolutely necessary, their more immediate duties in Parliament are held to supersede the obligation of attendance in other courts.<sup>6</sup>

On the 20th February, 1826, Mr. Holford complained that he had

<sup>1</sup> 1 Parl. Hist. 630 ; D'Ewes, 347 ; 1 Hatsell, 96. 97. 169. 175 ; 3 L. J. 630 ; 1 C. J. 34. 48. 203. 205. 211. 368. 1040, &c. ; 9 ib. 339.

<sup>2</sup> 56 C. J. 122 ; 68 ib. 218. 243. 292 ; 71 ib. 110 ; 82 ib. 306. 379 ; see also 73

H. D. 3 s. 433 (Earl of Devon).

<sup>3</sup> 48 C. J. 318.

<sup>4</sup> 78 C. J. 132.

<sup>5</sup> 91 L. J. 508 ; 92 ib. 590 ; 103 C. J. 40 ; 106 ib. 277, &c.

<sup>6</sup> West, Inq. 28.

Subpoenas  
and juries.

Subpoenas  
(officers  
of the  
House).

Members  
summoned  
as jurors.

been fined for non-attendance as a jurymen by the Court of Exchequer, his excuse that he was attending the service of Parliament not being admitted ; and Mr. Ellice, another member, stated that he had also been fined for non-attendance, in the same court. A committee of privileges was immediately appointed, and the house, on receiving its report, resolved, *nem. con.*, that it is " amongst the most ancient and undoubted privileges of Parliament, that no member shall be withdrawn from his attendance on his duty in Parliament to attend on any other court." <sup>1</sup> Exemption, held good during an adjournment, was not ordinarily claimed by members after a prorogation ; and there was no distinct authority for its existence at that time : but by the Juries Act, 1870 (33 & 34 Vict. c. 77), peers and members of Parliament, and the officers of both houses, are included among the persons exempted from serving on juries, without reference to the sitting of Parliament.

Criminal  
commit-  
ments.

The privilege of freedom from arrest has always been limited to civil causes, and has not been allowed to interfere with the administration of criminal justice. In Larke's case, in 1429, the privilege was claimed, " except for treason, felony, or breach of the peace ; " and in Thorpe's case, the judges made exceptions to such cases as be " for treason, or felony, or surety of the peace." <sup>2</sup> The privilege was thus explained by a resolution of the Lords, 18th April, 1626 : " That the privilege of this house is, that no peer of Parliament, sitting the Parliament, is to be imprisoned or restrained, without sentence or order of the house, unless it be for treason or felony, or for refusing to give surety of the peace ; " <sup>3</sup> and again, by a resolution of the Commons, 20th May, 1675, " that by the laws and usage of Parliament, privilege of Parliament belongs to every member of the House of Commons, in all cases except treason, felony, and breach of the peace." <sup>4</sup> On the 14th April, 1697, it was resolved, " That no member of this house has any privilege in case of breach of the peace, or forcible entries, or forcible detainers." <sup>5</sup>

Seditious  
libels.

In connection with John Wilkes' case, on the 29th November,

<sup>1</sup> 81 C. J. 82. 87, 14 H. D. 2 s. 568. 569. See also case of Tracy. 1597, D'Ewes, 560, 1 Hatsell, 112 ; Sir W. Alford, 1628, 1 C. J. 898 ; Mr. Bennett, 14 H. D. 2 s. 642 ; Mr. Macleod, 21 H. D. 2 s. 1770. In the case of Viscount Enfield, 6th Feb. 1861, Chief Justice Erle stated, that " his lordship ought not to have been summoned as a juror, as members were not

bound to serve in any other court than that in which they had been returned to serve, viz. the High Court of Parliament."

<sup>2</sup> 4 Rot. Parl. 357 ; 5 ib. 239.

<sup>3</sup> 3 L. J. 562.

<sup>4</sup> 9 C. J. 342 ; see also Declaration by the Commons, 17th Aug. 1641, 2 C. J. 261.

<sup>5</sup> 11 ib. 784.

1763, although the Court of Common Pleas had decided otherwise,<sup>1</sup> it was resolved by both houses,

"That privilege of Parliament does not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of the laws in the speedy and effectual prosecution of so heinous and dangerous an offence."<sup>2</sup>

"Since that time," said the committee of privileges, in 1831, "it has been considered as established generally, that privilege is not claimable for any indictable offence."<sup>3</sup>

These being the general declarations of the law of Parliament, one case will be sufficient to show how little protection is practically afforded by privilege in criminal offences. In 1815, Lord Cochrane, a member, having been indicted and convicted of a conspiracy, was committed by the Court of King's Bench to the King's Bench Prison. Lord Cochrane escaped, and was arrested by the marshal, whilst he was sitting on the privy councillors' bench, in the House of Commons, on the right hand of the chair, at which time there was no member present, prayers not having been read. The case was referred to the committee of privileges, who reported that it was entirely of a novel nature, and that the privileges of Parliament did not appear to have been violated, so as to call for the interposition of the house, by any proceedings against the marshal of the King's Bench.<sup>4</sup>

Thus the house will not allow even the sanctuary of its walls to protect a member from the process of criminal law; though, as has been mentioned (p. 81), service of a criminal process on a member within the precincts of Parliament, whilst the house is sitting, may be a breach of privilege. But in all cases in which members are arrested on criminal charges, the house must be informed of the cause for which they are detained from their service in Parliament. Several Acts which have suspended for a time the Habeas Corpus Act, have contained provisions to the effect that no member of Parliament shall be imprisoned during the sitting of Parliament, until the matter of which he stands suspected shall be *first* communicated to the house of which he shall be a member, and the consent of the said house obtained for his commitment.<sup>5</sup> By the Protection of Person

<sup>1</sup> 2 Wils. 150; 19 State Tr. 981.

<sup>2</sup> 30 L. J. 426, 29 C. J. 680, 15 Parl. Hist. 1362-1378.

<sup>3</sup> 86 C. J. 701; see also Case of Lord Oliphant, in 1709, 19 L. J. 31, 34; and 26 ib. 492 (Gaming-houses).

<sup>4</sup> 70 C. J. 186, 30 H. D. 1 s. 309, 336, Colchester, ii. 534-536.

<sup>5</sup> See 17 Geo. II. c. 6; 45 Geo. III. c. 4, s. 2; 57 Geo. III. c. 3, s. 4; 57 Geo. III. c. 55, s. 4; 3 Geo. IV. c. 2, s. 4.

Causes of  
commit-  
ment to be  
communi-  
cated

and Property Act, 1881, it was provided that "if any member of either House of Parliament be arrested under this Act, the fact shall be immediately communicated to the house of which he is a member, if Parliament be sitting at the time, or if Parliament be not sitting, then immediately after Parliament reassembles, in like manner as if he were arrested on a criminal charge." The arrests of members, under this Act, as long as it remained in force, were communicated to the House of Commons accordingly.<sup>1</sup> In cases not affected by Acts of this special character, it has been usual to communicate the cause of commitment of a member after his arrest; and whenever members are in custody in order to be tried by naval<sup>2</sup> or military<sup>3</sup> courts martial, or have been committed to prison for any criminal offence by a court<sup>4</sup> or magistrate.<sup>5</sup> In the case of commitments for military offences, the communication is made by royal message (see p. 540). In the case of naval courts martial this communication is made by the lord high admiral or the Lords Commissioners of the Admiralty, by whom the warrants are issued for taking the members into custody; and copies of the warrants are, at the same time, laid before the house.

Communi-  
cation  
(commit-  
ment for  
criminal  
offence).

The committal of a member for high treason<sup>6</sup> or any criminal offence is brought before the house by a letter addressed to the Speaker by the committing judge or magistrate. On these occasions, the first communication to the Speaker is made when the member is committed to prison, bail not being allowed; <sup>7</sup> and subsequently, if the member be not released from custody, or acquitted, the judge informs the Speaker of the offence for which the member was condemned, and the sentence that has been passed upon him.<sup>8</sup>

<sup>1</sup> Mr. Dillon, 136 C. J. 213, 260 H. D. 3 s. 1744. Mr. Parnell, Mr. Sexton, Mr. O'Kelly and Mr. Dillon, also the release of Mr. Sexton, 137 C. J. 8, 266 H. D. 3 s. 98. A motion for a committee of inquiry was negatived, *ib.* Arrest of Mr. William O'Brien, 142 C. J. 552.

<sup>2</sup> 37 C. J. 57; 51 *ib.* 557; 62 *ib.* 145; 64 *ib.* 214; 67 *ib.* 246, &c.; 47 L. J. 349 (Lord Gambier); and see case of Lord Torrington, 14 *ib.* 521. 523. 525. 527.

<sup>3</sup> 39 C. J. 479; 51 *ib.* 139; 58 *ib.* 597; 59 *ib.* 33; 70 *ib.* 70.

<sup>4</sup> Mr. Healy, 138 C. J. 4. A motion for a committee of inquiry was negatived, *ib.*

<sup>5</sup> Mr. F. O'Connor, 107 C. J. 28; 157 *ib.* 3, &c. See also 171 *ib.* 227.

<sup>6</sup> Case of Mr. Arthur Lynch, 157 C. J. 281. See Mr. Speaker's ruling, 12th June, 1902, as to the sufficiency of a similar communication in cases of high treason as in other criminal offences, 109 Parl. Deb. 4 s. 480." In the case of Lord George Gordon the communication was made by a royal message, 37 C. J. 903, and in the case of Mr. Smith O'Brien by a letter from the Lord-Lieutenant of Ireland, 103 *ib.* 888.

<sup>7</sup> Where a member is convicted but released on bail pending an appeal, the duty of the magistrate to communicate with the Speaker does not arise, 113 Parl. Deb. 4 s. 234.

<sup>8</sup> Captain Verney, 146 C. J. 268; Mr. Hastings, 147 *ib.* 101; Mr. Lynch, 158 *ib.* 3.



In the case of an attachment order for contempt of court (see p. 118), the judge informs the Speaker that such an order has been issued, but cannot certify to him when the arrest actually takes place, for the issue of the order is left at the discretion of the applicant for such an order, which is placed, when issued, in the sheriff's hands for execution. Communi-  
cation (at-  
tachment  
for con-  
tempt).

The same distinction between civil and criminal processes has been observed in the case of bankrupts. By the Bankruptcy Law Bank-  
rupts. Consolidation Act, 1849, s. 66, it was enacted that, "If any trader having privilege of Parliament shall commit any act of bankruptcy, he may be dealt with under the Act in like manner as any other trader: but such person shall not be subject to be arrested or imprisoned during the term of such privilege, except in cases made felonies and misdemeanours by this Act." It was enacted by the Bankruptcy Act, 1869, s. 120, and by the Bankruptcy Act, 1883, s. 124, that a person having privilege of Parliament was to be dealt with as if he had not such privilege, and this provision has been re-enacted by the Bankruptcy Act, 1914.<sup>1</sup>

Another description of offence, partaking of a criminal character, is a contempt of a court of justice; and it was for some time doubtful how far privilege would extend to the protection of a member committed for a contempt. For instance, in the case of Henry, Lord Cromwell, 30th June, 1572, who had been attached by the sheriff of Norfolk, by a writ of attachment from the Court of Chancery, for not obeying an injunction of that court, though the Lords ordered Lord Cromwell to be discharged of the attachment, they declared that if at any future time cause should be shown that by the queen's prerogative, or by common law or custom, or by any statute or precedents, the persons of lords of Parliament are attachable, the order in this case should not affect their decision in judging according to the cause shown.<sup>2</sup> Commit-  
ment of  
members  
for con-  
tempt of  
court.  
  
Cases in  
the House  
of Lords.

On the 9th February, 1625, the Lord Vaux claimed his privilege; for stay of the proceedings in an information against him in the Star Chamber; and it was granted.<sup>3</sup> By standing order No. 72, 8th June, 1757, no peer or lord of Parliament has privilege of peerage, or of Parliament, against being compelled to pay obedience to a writ of

<sup>1</sup> 4 & 5 Geo. V. c. 59, s. 128.

<sup>2</sup> 1 L. J. 727; 4 ib. 27; 12 ib. 122; Prynn, 4th Register, 792; case of Duchess of Sutherland, 18th April, 1893.

<sup>3</sup> 3 L. J. 496; see also the case of Lord Arundel, 3 ib. 558 (Report of Precedents), 562, &c.

habeas corpus directed to him, and such an attachment may be granted, if a peer refuses obedience to such a writ.<sup>1</sup>

Cases in  
the House  
of Com-  
mons.

In 1605, in the case of Mr. Brereton, who had been committed by the Court of King's Bench for a contempt, the Commons brought up their member by a writ of habeas corpus, and received him in the house.<sup>2</sup>

In more recent cases, members committed by courts for open contempt have failed in obtaining their release by virtue of privilege.

Mr. Long  
Wellesley.

In 1831, Mr. Long Wellesley, a member, having confessed in the Court of Chancery, that he had taken his infant daughter, a ward in chancery, out of the jurisdiction of the court, Lord Brougham, C., at once committed him for contempt. The lord chancellor acquainted the Speaker of this commitment; and Mr. Wellesley also appealed, through the Speaker, to the House of Commons, and claimed his privilege. His case was referred to the committee of privileges, who reported, "that his claim to be discharged from imprisonment, by reason of privilege of Parliament, ought not to be admitted."<sup>3</sup>

Mr. Lech-  
mere  
Charlton.

The next case was that of Mr. Lechmere Charlton, in 1837. That member had been committed by the lord chancellor, for a contempt, in writing a letter to one of the masters in chancery, "containing matter scandalous with respect to him, and an attempt improperly to influence his decision." The lord chancellor stated the grounds of this commitment, in a letter to the Speaker, to whom Mr. Charlton also complained of his commitment. These letters were referred to a committee of privileges, and after a full inquiry into the nature of the contempt, the committee reported that Mr. Charlton's claim to be discharged from imprisonment ought not to be admitted.<sup>4</sup>

Mr.  
Whalley.

The case of Mr. Whalley, in 1874, was, in some respects, exceptional. On the 23rd January, he was committed by the Court of Queen's Bench for a contempt, Parliament not then being sitting. On the 26th, Parliament was dissolved, and, in the mean time, Mr.

<sup>1</sup> *Rex v. Earl Ferrers*, 1 Burr. 631; see statement in Bac. Abr. vi. 546; 2 Hawk. P. C. c. 22, s. 33. "The courts will not grant an attachment against a peer or member of Parliament (see p. 118) for non-payment of money according to award. 7 Term. Rep. 171. 448. See *dicta* of Lord Brougham, in *Westmeath v. Westmeath*, (1831) 9 L. J. (CH.) 177. Contempt of court committed by privileged persons was formerly punished by sequestration of their property. The

Countess of Shaftesbury, 2 P. Wms. 110.

<sup>2</sup> 1 C. J. 269; also *Bampfild's case*, ib. 466.

<sup>3</sup> 86 C. J. 701.

<sup>4</sup> 92 C. J. 3, *et seq.*; Parl. Pap. (H. C.) sess. 1837, No. 45. As the lord chancellor's order did not set forth the letter, the committee directed it to be produced, as "it was necessary that the House of Commons should be informed of the particulars of the contempt."

Whalley had been discharged from custody. Doubts were raised whether, under these circumstances, it was necessary for the court to communicate this commitment to the house ; but, on the meeting of the new Parliament, the lord chief justice addressed a letter to the Speaker, explaining all the facts of the case. A committee on privilege, to whom this letter was referred, reported that it did not demand the further attention of the house, and they also expressed their opinion "that the lord chief justice fulfilled his duty in informing the house that a member of the House of Commons had been imprisoned by the Court of Queen's Bench."<sup>1</sup>

On the 17th August, 1882, Mr. Speaker acquainted the house that Mr. Gray. he had received a letter from Mr. Justice Lawson, sitting under a commission in Dublin, informing him that he had committed Mr. Gray, a member, for contempt of court, in publishing certain articles, calculated to prejudice the administration of justice. As the house was on the eve of a long adjournment, no further action was taken : but on the next meeting of the house, on the 24th October, a select committee was appointed to consider the matter. Meanwhile Mr. Gray had been discharged ; and his discharge was communicated to the house. The committee, having examined Mr. Gray and other witnesses, and considered various documents, reported, in the terms of former committees, that the matters referred to them did not demand the further attention of the house.<sup>2</sup>

On the 19th June, 1902, Mr. Speaker acquainted the house that Mr. he had received a letter from Mr. Robert L. Brown, stating that a Mr. McHugh. court held under the Criminal Law and Procedure (Ireland) Act, 1887, and consisting of another resident magistrate and himself, had committed Mr. Patrick Aloysius McHugh, a member, "for three months on his refusal to enter into recognizances to be of good behaviour, he having grossly insulted the court." A select committee was appointed to consider the matter. Having examined Mr. McHugh and other witnesses, and considered various documents, they reported that there was no difference of principle between the cases of Mr. Wellesley Long, Mr. Charlton, Mr. Whalley, and Mr. Dwyer Gray, and that of Mr. McHugh, that the last-named's contempt was of a criminal and not a civil character, that no distinction

<sup>1</sup> Parl. Pap. (H. C.) sess. 1874, No. 77 ; 218 H. D. 3 s. 52. 108.

<sup>2</sup> 137 C. J. 487. 491 ; 273 H. D. 3 s. 1978. 2049 ; 274 ib. 34. Report of Com-

mittee on Privilege (Mr. Gray), Parl. Pap. (H. C.) sess. 1882, No. 406 ; see also case of Mr. T. M. Healy's imprisonment, 138 C. J. 4.

could be drawn between cases of criminal contempt and other indictable offences, and that the house was not required to take any further steps in the case.<sup>1</sup>

On the 28th November, 1888, Mr. Gent Davis, a member, was imprisoned under an attachment order for contempt of court in appropriating and neglecting to pay into court money received by him as receiver appointed by the Court of Chancery.<sup>2</sup>

On the 9th June, 1903, Mr. Patrick Aloysius McHugh, a member, was arrested and imprisoned under an attachment order for contempt of court made on the 19th April, 1902, and then communicated to the Speaker.<sup>3</sup>

It must not, however, be understood that either house has waived its right to interfere when members are committed for contempt. Each case is open to consideration when it arises; and although protection has not been extended to flagrant contempts, privilege might still be allowed against commitment under any civil process, or if the circumstances of the case appeared otherwise to justify it. By the Ecclesiastical Courts (Contempt) Act, 1832 (2 & 3 Will. IV. c. 93), an Act for enforcing the process of contempts in matters ecclesiastical, an exception is made from committal for contempt of court in behalf of peers or members of Parliament.

In January, 1873, the Court of Queen's Bench fined Mr. Onslow and Mr. Whalley, two members of the House of Commons, for a contempt of that court, when Chief Justice Cockburn took occasion to state that the court would not have been restrained by privilege from committing these members, if it had thought fit.

It is only in cases of *quasi* criminal contempts that members of either house may be committed, without an invasion of privilege. Such a commitment, as part of a civil process for the recovery of a debt, will not be resorted to by a court, nor would it be allowed in Parliament.<sup>4</sup>

On the 24th March, 1880, application was made to Vice-Chancellor Hall for an order for the committal of Mr. Fortescue Harrison, a

<sup>1</sup> 157 C. J. 300; Report of select committee on Imprisonment of a Member, Parl. Pap. (H.C.) sess. 1902, No. 309. See also case of Mr. Ginnell, a member, committed for contempt of court, 29th January, 1908, 163 C. J. 3, 183 Parl. Deb. 4 s. 82. As to what is criminal contempt, see 15 P. D. 59; 32 L. R. Ir. 220.

<sup>2</sup> 143 C. J. 488.

<sup>3</sup> 157 C. J. 175; 158 ib. 219; 123 Parl. Deb. 4 s. 309.

<sup>4</sup> His Honour Judge Bayley (Westminster County Court) refused to grant an order for the committal of a member for non-payment of a judgment debt on the ground of privilege, Report in *Times* newspaper, 10th Feb. 1892; see also p. 116, n.

Attachment for contempt of court.  
Mr. Gent Davis.  
Mr. McHugh.

Members fined for contempt of court.

Limitation of power to commit members for contempt of court.

member, for contempt, in not having complied with an order of the court for payment of certain moneys, and the delivery of documents to the liquidator of a company. The vice-chancellor, however, held that privilege protected a member, except in cases of a gross character, and that the contempt, in this case, was not such as to justify the court in committing a member. On that same day Parliament was dissolved, and Mr. Fortescue Harrison did not seek re-election. On the 15th April, application was again made to the court for his commitment: but the vice-chancellor held that privilege extended to a period of forty days after a prorogation or dissolution of Parliament, and as that time had not yet expired, he refused to entertain the motion, on the ground of privilege, and without reference to the merits of the case.<sup>1</sup> A similar case affecting a peer had been decided, after full consideration, by the judge of the Brompton County Court, in 1879. On the same ground, Mr. Justice Vaughan Williams refused an order of committal for contempt of court against a member who declined to be examined pursuant to a summons issued by the court in a matter of bankruptcy, because the member's conduct contained "no element of personal contempt, or any offence for which he could be sent to prison as a punishment."<sup>2</sup>

As yet the personal privilege of members, and the ancient privilege of their servants, have alone been noticed. These were founded upon the necessity of enabling members freely to attend to their duties in Parliament. Upon the same ground, a similar privilege of freedom from arrest and molestation is attached to all witnesses summoned to attend before either house of Parliament, or before parliamentary committees, and to others in personal attendance upon the business of Parliament, in coming, staying, and returning; and to officers of either house, in immediate attendance upon the service of Parliament.<sup>3</sup> In the early journals there are numerous orders that all persons attending in obedience to the orders of the house, and of committees, shall have the privilege or protection of the house.<sup>4</sup> A few precedents will serve to explain the nature and extent of this privilege.

Instances of protection given by the Lords to witnesses and to parties, while their causes or bills were depending, appear very frequently on the journals of that house.

<sup>1</sup> 14 Ch. D. 533.

<sup>2</sup> *In re Armstrong, ex parte Lindsay*, 8 Morr. 271.

<sup>3</sup> Lex. Parl. 380; 1 Hatsell, 9. 11. 172.

<sup>4</sup> 1 C. J. 505; 2 ib. 107; 9 ib. 62; 13 ib. 521, &c.

Privilege  
of wit-  
nesses,  
suitors,  
and  
others.

Their free-  
dom from  
arrest.

In 1640, Sir Pierce Crosbie, sworn as a witness in Lord Strafford's cause, being threatened with arrest, was allowed privilege, "to protect him during the time that this house examine him." In 1641, it was ordered that Sir T. Lake, who had a cause depending, should "have liberty to pass in and out unto the house, and to his counsel, solicitor, and attorney, for and during so long time only as his cause shall be before their lordships in agitation;" and many similar orders have been made in the case of other parties, who have had causes depending, or bills before the house.<sup>1</sup>

On the 12th May, 1624, the master and others of the Feltmakers Company were ordered, by the Commons, to be enlarged from the custody of the warden of the Fleet, for the prosecution of a bill then depending, "till the same be determined by both houses."<sup>2</sup> In the same manner, privilege was extended to persons who had petitions or bills depending, on 22nd and 29th January, 1628, 23rd January, 1640, 3rd May, 1701, and 11th May, 1758.<sup>3</sup> Numerous instances have occurred, in which witnesses, who have been arrested on their way to or from Parliament, or during their attendance there, have been discharged out of custody;<sup>4</sup> and the same protection is extended, not only to parties, but to their counsel, solicitors and agents, in prosecuting any business in Parliament.<sup>5</sup>

The last case that need be mentioned is that of Mr. Petrie in 1793. That gentleman was a petitioner in a controverted election and claimed to sit for the borough of Cricklade. Having received the usual notice to attend, by himself, his counsel or agents, he attended the sittings of the election committee as a party in the cause. He was arrested before the committee had closed their inquiries; and on the 20th March the house, after receiving a report of precedents, ordered, *nem. con.*, that he should be discharged out of the custody of the sheriff of Middlesex.<sup>6</sup>

Protection  
of wit-  
nesses and  
others  
from suits  
and moles-  
tation.

Witnesses, petitioners and others, being thus free from arrest while in attendance on Parliament, are further protected, by privilege, from the consequences of any statements which they may have

<sup>1</sup> 4 L. J. 143. 144. 262. 263. 289. 330. 477; 5 ib. 476. 563. 574. 653. 680; 25 ib. 625; 27 ib. 19. 538; 28 ib. 512.

<sup>2</sup> 1 C. J. 702; Bryer's case, ib. 863.

<sup>3</sup> 1 C. J. 921. 924; 2 ib. 72; 13 ib. 512; 28 ib. 244.

<sup>4</sup> 8 C. J. 525; 9 ib. 20. 366. 472; 12 ib. 364. 610; 66 ib. 226. 232; 90 ib. 521.

<sup>5</sup> 88 L. J. 189; 92 ib. 75. 76; cases of Mr. Gardener and of Mr. Douglas, 9 C. J. 472; 24 ib. 170; 26 ib. 797; 27 ib. 447. 537. 548. Similar protection is given by courts of law, even in arbitration cases, to witnesses, &c., Court of Q. B. *in banco*, 7th Nov. 1857.

<sup>6</sup> 48 C. J. 426.

made before either house; and any molestation, threats, or legal proceedings against them, will be treated by the house as a breach of privilege. The House of Commons resolved, 26th May, 1818, "That all witnesses examined before this house, or any committee thereof, are entitled to the protection of this house, in respect of anything that may be said by them in their evidence;"<sup>1</sup> and persons who punish, damnify, or injure witnesses before committees of either house of Parliament on account of their evidence may, under the Witnesses (Public Inquiries) Protection Act, 1892, be convicted of a misdemeanour, fined, imprisoned and condemned to pay the costs of the prosecution, as well as a sum by way of compensation to the injured persons.

On the 23rd November, 1696, "A complaint being made that Sir G. Meggott had prosecuted at law several persons for what they testified, the last session, at the committee of privileges and elections," it was referred to that committee to examine the matter of the complaint. It appeared from their report, 4th December, that Sir G. Meggott had thought that he might lawfully bring the action; "but as soon as he was better advised, he desisted, and suffered himself to be nonsuited, and had paid them their costs." Notwithstanding his submission, the house agreed with the committee in a resolution, that he had been guilty of a breach of privilege, and committed him to the Serjeant.<sup>2</sup>

Witnesses  
before  
election  
com-  
mittee.

In the same year, under similar circumstances, the house committed Mr. Gee to the custody of the Serjeant for prosecuting at law certain hackney coachmen for petitioning the house.<sup>3</sup>

Peti-  
tioners.

On the 8th April, 1697, the Lords attached T. Stone, for striking and insulting a witness, below the bar, who had been summoned to attend a committee, and directed the attorney-general to prosecute him for his offence.<sup>4</sup> On the 5th March, 1710, on the report from a committee that John Hare, a soldier, was afraid of giving evidence, the Commons resolved, "that this house will proceed with the utmost severity against any person that shall threaten, or any way injure, or send away the said J. Hare, or any other person that shall give evidence to any committee of this house;" and on the 9th February, 1715, a complaint being made that C. Medlycot, Esq., had been abused and insulted, "in respect to the evidence by him

Witnesses  
before  
com-  
mittees.

<sup>1</sup> 73 C. J. 389; see also debate on East Retford Disfranchisement Bill (1828), 18 H. D. 2 s. 970.

<sup>2</sup> 11 C. J. 591. 613.

<sup>3</sup> 11 C. J. 699.

<sup>4</sup> 16 L. J. 144.

given " before a committee, the person complained of was committed to the custody of the Serjeant.<sup>1</sup> On the 28th February, 1728, it was reported to the house, by a committee appointed to inquire into the state of the gaols, that Sir W. Rich, a prisoner in the Fleet, had been misused by the warden of the Fleet, in consequence of evidence given by the former to the committee. The house declared, *nem. con.*, that the warden was guilty of contempt, and committed him to the Serjeant-at-arms.<sup>2</sup>

Witness  
before a  
committee  
on a bill.

On the 10th May, 1733, complaint was made that Jeremiah Dunbar, Esq., had been censured by the House of Representatives of Massachusetts Bay, for evidence given by him before a committee on a bill, upon which the house resolved, *nem. con.*, " That the presuming to call any person to account, or to pass a censure upon him, for evidence given by such person before this house, or any committee thereof, is an audacious proceeding, and a high violation of the privileges of this house." <sup>3</sup>

Arrest of  
witness.

In 1819, Thomas Stinton, a soldier examined before the Worcester Election Committee, was arrested by the sergeant of his regiment, in the lobby, for absenting himself from drill. There were, however, other circumstances in the case, which induced the house not to regard this as a breach of privilege.<sup>4</sup>

Actions at  
law  
against  
witnesses.

On the 2nd July, 1845, Mr. Jasper Parrott complained to the house, by petition, that an action had been commenced against him in respect of evidence which he had given before a committee. The plaintiff and his solicitors, having been ordered to attend, disclaimed any intention of violating the privileges of the house, and declared that the action would be discontinued. They were, in consequence, discharged from further attendance, although the commencement of the action was declared to be a breach of privilege.<sup>5</sup> It is worthy of remark, that the plaintiff's solicitor stated, in a petition to the house, that the declaration had been framed upon the assumption that a witness would not be protected, by privilege, in respect of any evidence which was wilfully and maliciously false, any more than the powers of the superior courts at Westminster would be exerted to protect any witness from an indictment for perjury. The house, however, did not recognize any such analogy : but resolved to protect

<sup>1</sup> 16 C. J. 535 ; 18 ib. 371 ; see also Mr. Gould's case, 12th March, 1819, 74 ib. 223.

<sup>2</sup> 21 C. J. 247.

<sup>3</sup> 22 C. J. 146.

<sup>4</sup> 39 H. D. 1 s. 1168. 1226.

<sup>5</sup> 100 C. J. 672. 680. 697, 81 H. D. 3 s. 1436.



the witness from all proceedings against him, in respect of the evidence given by him before a committee. In the same year, a similar case occurred in the House of Lords. Peter Taite Harbin had brought an action, by John Harlow, his attorney, against Thomas Baker, for false and malicious language uttered before the House of Lords, in giving evidence before a committee. On the 14th July, the plaintiff and his attorney were summoned to the bar, and on their refusal to state that the action should not be proceeded with, were both declared guilty of a breach of privilege, and committed.<sup>1</sup>

On the 7th April, 1892, a member of the house, who was a director of the Cambrian Railway Company, attended the house, in his place, and two other directors and the manager of the company, at the bar, under an order of the house made in consequence of a special report from the select committee on Railway Servants (Hours of Labour). The committee reported that, in the course of their inquiry, it came to their knowledge that allegations were made that certain persons had been reduced or dismissed from the service of the company, in consequence of the evidence they had given before the committee, and that in the case of one person, John Hood, he was dismissed by the company mainly in consequence of charges arising out of the evidence given by him before the committee. The committee also reported that the manager of the company laid the evidence relating to John Hood before the directors of the company, and that they, the directors of the company then present, when John Hood asked for a re-hearing of the case, called him to account, and censured him for the evidence which he gave before the committee, in a manner calculated to deter other railway servants from giving evidence before a committee of the house. The member was heard in his place, in behalf of himself and the other directors and the manager of the Cambrian Railway Company, and stated that they had not the slightest intention of deterring any railway servant from giving evidence before the committee; and that if they had, by the course they had adopted, unintentionally infringed any of the rules or privileges of the house, they asked the house to accept the unqualified expression of their regret; and one of the directors expressed his entire concurrence with the member's statement. They then withdrew; and the house resolved that, while recognizing that the directors and manager of the company had disclaimed any intention to deter any railway servant from giving

Complaint  
by select  
committee  
of treat-  
ment of  
witnesses.

<sup>1</sup> 77 L. J. 690. 712. 729, 82 H. D. 3 s. 431. 494.

evidence before its committee, and had expressed their unqualified regret for having unintentionally infringed any of its rules and privileges, the house was of opinion that they had committed a breach of the privileges of the house in their action towards John Hood, and that they be called in and admonished by Mr. Speaker for the breach of privilege that they had committed. The directors and the manager were accordingly called in, the member standing in his place, and the other directors and manager standing at the bar, and received the admonition of the Speaker; which, by the order of the house, was entered upon the journal.<sup>1</sup>

Protection  
of counsel.

The privilege of protection from molestation in respect of what they have stated professionally, is also extended to counsel. On the 21st March, 1826, complaint was made that an insulting letter had been written by John Lee Wharton to Mr. Fonblanque, K.C., in relation to a speech made by him at the bar of the House of Lords on the 16th March. Mr. Wharton attended, according to order, and on making a proper submission and apology, was discharged from further attendance.<sup>2</sup>

State-  
ments to  
Parlia-  
ment not  
action-  
able.

Apart from the protection afforded by privilege, it appears that statements made to Parliament in the course of its proceedings are not actionable at law. In *Lake v. King*,<sup>3</sup> which was an action upon the case for printing a false and scandalous petition to the committee of Parliament for grievances, it was agreed by the court, "that the exhibiting the petition to a committee of Parliament was lawful, and that no action lies for it, although the matter contained in the petition was false and scandalous, because it is in a summary course of justice, and before those who have power to examine whether it be true or false. But the question was, whether the printing and publishing of it, in the manner alleged by the defendant in his plea," viz. by delivering printed copies to the members of the committee, "according to custom used by others in that behalf, and approved of by the members of the said committee," was justifiable or not? Judgment was given for the defendant, by Hale, C.J., upon the ground, "that it was the order and course of proceedings in Parliament to print and deliver copies, whereof they ought to take judicial notice."

Admis-  
sible as  
evidence.

In *Rex v. Mercer*, an indictment against a magistrate for mis-

<sup>1</sup> 147 C. J. 166.

<sup>2</sup> 58 L. J. 128. 145.

<sup>3</sup> 1 Saund. 131 b; 1 Lev. 240; 2 Keb.

361. 383. 462. 496. 659. 801. See also 2 Co. Inst. 228, as to evidence before a jury being privileged.

conduct in his office, in having corruptly granted licences to public-houses, which were his own property, it was proposed, in behalf of the prosecutor, to prove what had been said by the defendant, in the course of his examination before a committee of the House of Commons, appointed for the purpose of inquiring into the police of the metropolis. The defendant had been compelled to appear before this committee, and had, upon examination, delivered in a list of certain public-houses, with the names of the owners and other particulars. On the part of the defendant it was objected, that since this statement had been made under a compulsory process from the House of Commons, and under the pain of incurring punishment as for a contempt of that house, the declarations were not voluntary, and could not be admitted for the purpose of criminating the defendant : but Abbott, C.J., was of opinion that the evidence was admissible.<sup>1</sup>

<sup>1</sup> 2 Stark. 366.

## CHAPTER VI.

## JURISDICTION OF COURTS OF LAW IN MATTERS OF PRIVILEGE.

Difficulty  
of the  
question.

THE precise jurisdiction of courts of law in matters of privilege is one of the most difficult questions of constitutional law that has ever arisen. Upon this point the precedents of Parliament are contradictory, the opinions and decisions of judges have differed, and the most learned and experienced men of the present day are not agreed. It would, therefore, be presumptuous to define the jurisdiction of the courts, or the bounds of parliamentary privilege; but it may not be useless to explain the principles involved in the question, to cite the chief authorities, and to advert to some of the leading cases that have occurred.

Principles  
stated.

It has been shown already (see p. 65), that each house of Parliament claims to be sole and exclusive judge of its own privileges, and that the courts have repeatedly acknowledged the right of both houses to declare what is a breach of privilege, and to commit the parties offending, as for a contempt: but, although the courts will neither interfere with Parliament in its punishment of offenders, nor assume the general right of declaring and limiting the privileges of Parliament, they are bound to administer the law of the land, and to adjudicate when breaches of that law are complained of. The jurisdiction of Parliament, and the jurisdiction of the courts, are thus liable to be brought into conflict. The House of Lords, or the House of Commons, may declare a particular act to have been justified by their order, and to be in accordance with the law of Parliament; while the courts may decline to acknowledge the right of one house to supersede, by its sole authority, the laws which have been made by the assent, or which exist with the acquiescence, of all the branches of the legislature. It is true that, in a general sense, the law of Parliament is the law of the land: but if one law should appear to clash with the other, how are they to be reconciled? Is the declaration of one component part of Parliament to be conclusive as to the law; or are the legality of the declaration and the jurisdiction of the house to be measured by the general law of the land?

In these questions are comprised all the difficulties attendant upon the conflicting jurisdictions of Parliament and of the courts of law.

It is contended, on the one hand, that in determining matters of privilege the courts are to act ministerially rather than judicially, and to adjudicate in accordance with the law of Parliament, as declared by either house ; while, on the other, it is maintained that, although the declaration of either house of Parliament, in matters of privilege within its own immediate jurisdiction, may not be questioned, its orders and authority cannot extend beyond its jurisdiction, and influence the decision of the courts in the trial of causes legally brought before them. From these opposite views it naturally follows that, in declaring its privileges, Parliament may assume to enlarge its own jurisdiction, and that the courts may have occasion to question and confine its limits.

The claim of each house of Parliament to be the sole and exclusive judge of its own privileges has always been asserted in Parliament, upon the principles, and with the limitations which were stated on p. 65, and is the basis of the law of Parliament. This claim has been questioned in the courts of law : but before the particular cases are cited, it will be advisable to take a general view of the legal authorities which are favourable or adverse to the claim, in its fullest extent, as asserted by Parliament.

The earliest authority on which reliance is usually placed, in support of the claim, is the well-known answer of the judges in Thorpe's case (see p. 103). In the 31st Henry VI. (1452), on the Lords putting a case to the judges, whether Thomas Thorpe, the Speaker of the Commons, then imprisoned upon judgment in the Court of Exchequer, at the suit of the Duke of York, "should be delivered from prison by virtue of the privilege of Parliament or not," the Chief Justice Fortescue, in the name of all the justices, answered—

Authorities in favour of the exclusive jurisdiction of Parliament.

"That they ought not to answer to that question, for it hath not been used aforetyme, that the justices should in anywise determine the privilege of this High Court of Parliament ; for it is so high and so mighty in its nature, that it may make law, and that that is law it may make no law ; and the determination and knowledge of that privilege belongeth to the Lords of the Parliament, and not to the justices." <sup>1</sup>

In regard to this case it must be observed that no legal question had come before the judges for trial, in their judicial capacity : but

<sup>1</sup> 5 Rot. Parl. 240 ; see also Lord Ellenborough's observations upon this case, 14 East, at p. 29.

that, as assistants of the House of Lords, their opinion was desired upon a point of privilege which was clearly within the immediate jurisdiction of Parliament and was awaiting its determination. Under these circumstances it was natural that the judges should be reluctant to press their own opinions, and desirous of leaving the matter to the decision of the Lords. That part of their answer which alleges that Parliament can make and unmake laws, as a reason why the judges should not determine questions of privilege, can only apply to the entire Parliament, and not to either house separately, nor even to both combined; and, consequently, it has no bearing upon the jurisdiction of Parliament, except in a legislative sense.

The principle of this answer was adopted and confirmed by Sir Edward Coke, who lays it down that "whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere;" and again, that "judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the common laws, but *secundum legem et consuetudinem Parliamenti*; and so the judges in divers Parliaments have confessed." <sup>1</sup>

In the case of *Barnardiston v. Soame*, in 1674, Lord Chief Justice North said—

"I can see no other way to avoid consequences derogatory to the honour of the Parliament but to reject the action, and all others that shall relate either to the proceedings or privilege of Parliament, as our predecessors have done. For if we should admit general remedies in matters relating to the Parliament, we must set bounds how far they shall go, which is a dangerous province; for if we err, privilege of Parliament will be invaded, which we ought not in any way to endamage." <sup>2</sup>

In the same argument, however, he said—

"Actions may be brought for giving Parliament protections wrongfully; actions may be brought against the Clerk of the Parliaments, Serjeant-at-arms, and Speaker, for aught I know, for executing their offices amiss, with averments of malice and damage; and then must judges and juries determine what they ought to do by their officers. This is in effect prescribing rules to the Parliament for them to act by." <sup>3</sup>

In the case of *Paty*, one of the *Aylèsbury* men, brought up by

<sup>1</sup> 4 Co. Inst. 15; see also definition of the Commons' jurisdiction, Clarendon, book iv. § 233.

<sup>2</sup> 6 State Tr. 1110.

<sup>3</sup> Ib. 1109.

*habeas corpus*, Mr. Justice Powell thus defined the jurisdiction of the courts in matters of privilege—

“This court may judge of privilege, but not contrary to the judgment of the House of Commons. . . . This court judges of privilege only incidentally; for when an action is brought in this court, it must be given one way or other. . . . The court of Parliament is a superior court; and though the King’s Bench have a power to prevent excesses of jurisdiction in courts, yet they cannot prevent such excesses in Parliament, because that is a superior court, and a prohibition was never moved for to the Parliament.”<sup>1</sup>

It is laid down by Hawkins that

“There can be no doubt but that the highest regard is to be paid to all the proceedings of either of those houses; and that wherever the contrary does not plainly and expressly appear, it shall be presumed that they act within their jurisdiction, and agreeably to the usages of Parliament, and the rules of law and justice.”<sup>2</sup>

Lord Chief Baron Comyn, following the opinion of Sir Edward Coke, affirms that

“All matters moved concerning the Peers and Commons in Parliament, ought to be determined according to the usage and customs of Parliament, and not by the law of any inferior court.”<sup>3</sup>

In several other cases which related solely to commitments by either house of Parliament, very decided opinions have been expressed by the judges, in favour of privilege (see p. 70), and adverse to the jurisdiction of the courts of law: but most of these may be taken to apply more especially to the undoubted right of commitment for contempt, rather than to general matters of law in which privilege may be concerned. These authorities are sufficient, for the present purpose, to show the general confirmation of the exclusive jurisdiction of Parliament in matters of privilege: but even here the parliamentary claim is occasionally modified and limited, as in the opinions of Lord Clarendon, Lord Chief Justice North and Lord Kenyon.

In other cases, the jurisdiction of courts of law has been more extensively urged, and the privileges of Parliament proportionately limited. In *Benyon v. Evelyn*, the Lord Chief Justice, Sir Orlando Bridgman, came to the conclusion—

“That resolutions or votes in either house of Parliament, in the absence of the parties concerned, are not so conclusive in courts of law, but we may (with due

Authori-  
ties in  
support of  
the juris-  
diction of  
courts in  
matters of  
privilege.

<sup>1</sup> 2 *Ld. Raym.* 1105; *seq.* also the opinions of Mr. Justice Blackstone and Lord Kenyon in the cases of *Brass Crosby*, 8 *State Tr.* at p. 33, and *Rex v. Wright*, 8

*Term Rep.* at p. 296.

<sup>2</sup> 2 *Hawk. P. C.* c. 15, s. 73.

<sup>3</sup> *Com. Dig.*, “Parliament” (G. 1).

respect notwithstanding these resolutions), nay, we must give our judgment according as we upon our oaths conceive the law to be, though our opinions fall out to be contrary to those resolutions or votes of either house.”<sup>1</sup>

On another occasion Lord Chief Justice Willes said—

“I declare for myself, that I will never be bound by any determination of the House of Commons, against bringing an action at common law for a false or double return; and a party may proceed in Westminster Hall, notwithstanding any order of the house.”<sup>2</sup>

Lord Mansfield, in arguing for the exclusive right of the Commons to decide upon elections, said—

“That, in his opinion, declarations of the law by either house of Parliament were always attended with bad effects: he had constantly opposed them whenever he had an opportunity; and, in his judicial capacity, thought himself bound never to pay the least regard to them:” “but he made a wide distinction between general declarations of law, and the particular decision which might be made by either house, in their judicial capacity, on a case coming regularly before them, and properly the subject of their jurisdiction.”

and at another time—

“a resolution of the House of Commons, ordering a judgment to be given in a particular manner, would not be binding in the courts of Westminster Hall.”<sup>3</sup>

In *Burdett v. Abbot*, Lord Ellenborough said—

“The question in all cases would be, whether the House of Commons were a court of competent jurisdiction, for the purpose of issuing a warrant to do the act.”<sup>4</sup>

Passing now to the most recent judicial opinions, the cases of *Stockdale v. Hansard* and *Howard v. Gosset* present themselves. An outline of all the proceedings in these cases (the most important that had arisen since that of *Ashby and White*) will be presently attempted: but, for the present, the expositions of the judges, in reference to the general jurisdiction of the courts, will be necessary to close this summary of authorities.

In giving judgment in the former case on the 31st May, 1839, Lord Denman used these words—

“But having convinced myself that the mere order of the house will not justify an act otherwise illegal, and that the simple declaration that that order is made in exercise of a privilege, does not prove the privilege; it is no longer optional with me to decline or accept the office of deciding whether this privilege exist in law.”

<sup>1</sup> Cited in *Burdett v. Abbot*, 14 East at p. 51.

<sup>2</sup> *Wynne v. Middleton*, 1 Wils. 128.

<sup>3</sup> 16 Parl. Hist. 653; 24 ib. 517.

<sup>4</sup> 14 East, at p. 128.



In the same trial Mr. Justice Littledale said—

"It is said the House of Commons is the sole judge of its own privileges; and so I admit, as far as proceedings in the house, and some other things, are concerned: but I do not think it follows that they have a power to declare what their privileges are, so as to preclude inquiry whether what they declare are part of their privileges. . . . I think that the mere statement that the act complained of was done by the authority of the House of Commons, is not of itself, without more, sufficient to call at once for the judgment of the court for the defendant." <sup>1</sup>

In giving judgment upon the case of *Bradlaugh v. Gosset*, Mr. Bradlaugh Justice Stephen affirmed the principle that the House of Commons <sup>v. Gosset.</sup> has the exclusive power of interpreting a statute, "so far as the regulation of its own proceedings within its own walls is concerned; and that even if that interpretation should be erroneous, this court has no power to interfere with it directly or indirectly." He moreover stated that "a resolution of the house, permitting Mr. Bradlaugh to take his seat on making a statutory declaration, would certainly never have been interfered with by this court," and that "if we had been moved to declare it void, and to restrain Mr. Bradlaugh from taking his seat until he had taken the oath, we should undoubtedly have refused to do so." The judge, however, declared that "on the other hand, if the house had resolved ever so decidedly that Mr. Bradlaugh was entitled to make the statutory declaration instead of taking the oath, and had attempted by resolution or otherwise to protect him against an action for penalties, it would have been our duty to disregard such a resolution, and if an action for penalties were brought, to hear and determine it according to our own interpretation of the statute" <sup>2</sup> (see also p. 138).

With these conflicting opinions as to the limits of parliamentary privilege and the jurisdiction of courts of law, if either house of Parliament insist upon precluding other courts from inquiring into matters which are held to be within its own jurisdiction, the proper mode of effecting that object, is the next point to be determined. If the courts were willing to adopt the resolutions of the house as their

<sup>1</sup> Proceedings as printed by the House of Commons, Parl. Pap. (H. C.) sess. 1839, No. 283, pp. 155. 159. 161; see also the concurrent opinions expressed by Mr. Justice Patteson and Mr. Justice Coleridge in *Stockdale v. Hansard*, ib. pp. 169. 174. 188, and by Mr. Justice Coleridge in *Howard v. Gosset*; Arguments and Judgment, as printed by the House of Commons, Parl. Pap. (H. C.) sess. 1845, No.

305, p. 105.

<sup>2</sup> 12 Q. B. D. at p. 280. See also the judge's opinion upholding the jurisdiction of the courts over a criminal act committed within the walls of Parliament, ib. 283, the remarks of Lord Ellenborough in *Burdett v. Abbot*, 14 East at p. 128, and argument in the House of Lords (1668) in case of Sir John Elliot and others, 1 Lives of the Norths, 66.

guide, the course would be clear. The authority and adjudication of the house would be pleaded, and the courts, acting ministerially, would at once give effect to them. If the court regards a question of privilege as any other point of law, and proceeds to define the jurisdiction of the house,—in what manner, and at what point, can their adverse judgments be prevented, overruled or resisted? The several modes that have been attempted will appear from the following cases: but it must be premised that when a privilege of the Commons is disputed, that house labours under a peculiar embarrassment. If the courts admit or deny the right of the privilege, their decisions are liable to be reversed by the House of Lords; and thus, contrary to the law of Parliament, one house would be constituted a judge of the privileges claimed by the other. With these perplexities before them, it is not surprising that the Commons should frequently have viewed all legal proceedings, in derogation of their authority, as a breach of privilege and contempt. They have restrained suitors and their counsel by prohibition and punishment, they have imprisoned the judges, they have coerced the sheriff: but still the law has taken its course.

Having opened the principles of the controversy respecting parliamentary jurisdiction, it is time to proceed with a narrative of the most important cases in which the privileges of Parliament have been called in question.

Case of  
Sir W.  
Williams.

Sir William Williams, Speaker of the House of Commons, in the reigns of Charles II. and James II., had printed and published, by order of the house, a paper well known in the histories of that time as Dangerfield's Narrative. This paper contained reflections upon the Duke of York, afterwards James II., and an information for libel was filed against the Speaker by the attorney-general in 1684. He pleaded to the jurisdiction of the court, that as the paper had been signed by him, as Speaker, by order of the House of Commons, the Court of King's Bench had no jurisdiction over the matter. On demurrer, this plea was overruled, and a plea in bar was afterwards made, but withdrawn; his plea, that the order of the house was a justification, was set aside by the court, without argument, as "an idle and insignificant plea;" and he was fined 10,000*l*. Two thousand pounds of this fine were remitted by the king, but the rest he was obliged to pay. The Commons were indignant at this contempt of their authority, and declared the judgment to be an illegal judgment and against the freedom of Parliament. It was also

included in the general condemnation by the Bill of Rights, of "prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament."<sup>1</sup>

The next important case is that of *Jay v. Topham*, in 1689. After a dissolution of Parliament, an action was brought in the Court of King's Bench against John Topham, Esq., Serjeant-at-arms, for executing the orders of the house in arresting certain persons. Mr. Topham pleaded to the jurisdiction of the court the said orders: but his plea was overruled, and judgment given against him. The house declared this judgment to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, who had been the judges in the cause, to the custody of the Serjeant-at-arms. They had protested, in their examination, that they had not questioned the legality of the orders of the house, but had overruled, on technical grounds, the plea to the jurisdiction. They averred also that, if there had been a plea in bar, the defendant would have been entitled to a judgment. Assuming the truth of their statements, it has been generally acknowledged that these proceedings against the judges were liable to great objection. Lord Ellenborough said that it was surprising "how a judge should have been questioned, and committed to prison by the House of Commons, for having given a judgment which no other judge who ever sat in his place could have differed from." In *Stockdale v. Hansard*, Lord Denman said that this judgment was righteous, and that the judges "vindicated their conduct by unanswerable reasoning;" and again, in *Howard v. Gosset*, he called the commitment of these judges "a flagrant abuse of privilege:" but, on the other hand, Lord Campbell has pointed out that there had been a plea in bar, which had been overruled, as stated in the petition of Topham to the House of Commons, and that the authority of that house had, in fact, been questioned by the judges.<sup>2</sup>

The remarkable cases of *Ashby and White*, and the *Aylesbury* men, in 1704, are next worthy of a passing notice. They have been already mentioned (p. 57), with reference to the right of determining elections: but they must again be cited, to point out the course adopted by the Commons to stay actions derogatory to their privileges.

<sup>1</sup> 10 C. J. 146. 177. 205. 215; <sup>2</sup> Show. 471; 13 State Tr. 1370, n.

<sup>2</sup> 10 C. J. 104. 227; 12 State Tr. 829. 831; *Stockdale v. Hansard*, Proceedings

as printed by the House of Commons, Parl. Pap. (H. C.) sess. 1839, No. 233, pp. 76. 149; Campbell, Ch. Just. ii. 54.; 2 Nelson's Abridg. 1248.

*Ashby v. White.*

Enraged by a judgment of the House of Lords, which held that electors had a right to bring actions against returning officers, touching their right of voting, the Commons declared that whoever should presume to commence or to prosecute such an action, was guilty of a breach of privilege. In spite of this declaration, five burgesses of Aylesbury, commonly known as "the Aylesbury men," commenced actions against the constables of their borough, for not allowing their votes. The House of Commons obtained copies of the declarations, and resolved that the parties were "guilty of commencing and prosecuting actions . . . in breach of the known privileges of this house:" for which offence the parties and their attorney were committed to Newgate. Thence they endeavoured to obtain their release by writs of habeas corpus, but without success; and the counsel who had pleaded for the prisoners, on the return of the writs, were committed to the custody of the Serjeant-at-arms.<sup>1</sup> The Lords took part with the Aylesbury men against the Commons; and after a tumultuous session, occupied with addresses, conferences and resolutions upon privilege, the queen prorogued the Parliament.

Printed  
papers.

At a later period a series of cases arose, in which the authority of the House of Commons and the acts of its officers were questioned. They have caused so much controversy, and have been so fully debated and canvassed, that nothing is needed but a succinct statement of the proceedings, and a commentary upon the present position of parliamentary privilege and jurisdiction.

Stockdale  
v. Han-  
sard.

Messrs. Hansard, the printers of the House of Commons, had printed, by order of that house, the reports of the inspectors of prisons, in one of which a book published by John Joseph Stockdale was described in a manner which he conceived to be libellous. He brought an action against Messrs. Hansard, during the recess in 1836, who pleaded the general issue, and proved the order of the house to print the report. This order, however, was held to be no defence to the action: but Stockdale had a verdict against him upon a plea of justification, as the jury considered the description of the work in question to be accurate. On that occasion Lord Chief Justice Denman, who tried the cause, made a declaration adverse to the privileges of the house, which Messrs. Hansard had set up as part of their defence. In his direction to the jury, his lordship said "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them,

<sup>1</sup> 14 C. J. 444, 445, 552.

or for any bookseller who publishes a parliamentary report containing a libel against any man." In consequence of these proceedings, a committee was appointed, in 1837, to ascertain the law and practice of Parliament in reference to the publication of papers, printed by order of the house. The result of these inquiries was the passing of resolutions by the house, declaring that the publication of parliamentary reports, votes, and proceedings was an essential incident to the constitutional functions of Parliament; that the house had sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; that to dispute those privileges by legal proceedings was a breach of privilege; and that for any court to assume to decide upon matters of privilege inconsistent with the determination of either house of Parliament was contrary to the law of Parliament.<sup>1</sup>

Stockdale, however, immediately commenced another action, and the house, instead of acting upon its resolutions, directed Messrs. Hansard to plead, and the attorney-general to defend them. In this action the privileges and order of the house were alone relied upon in the defence of Messrs. Hansard; and the Court of Queen's Bench unanimously decided against the claim of privilege. The House of Commons was reluctant to act upon its own resolutions and instead of punishing the plaintiff and his legal advisers ordered the damages and costs to be paid, "under the special circumstances of the case;" though it was determined that, in case of future actions, Messrs. Hansard should not plead and that the parties should suffer for their contempt of the resolutions and authority of the house. Another action was brought by the same person, and for the publication of the same report. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury, in the Sheriff's Court, at 600*l*. The Sheriffs of Middlesex levied for that amount, but having been served with copies of the resolutions of the house, they delayed paying the money to Stockdale as long as possible. At the opening of the session of Parliament in 1840, the money was still in their hands. The House of Commons at once entered on the consideration of these proceedings, and committed Stockdale to the custody of the Serjeant. The sheriffs were desired to refund the money, and, on their refusal, were also committed.<sup>2</sup> Mr. Howard, the solicitor of Mr. Stockdale, was suffered to escape

<sup>1</sup> 92 C. J. 418.

<sup>2</sup> The sheriffs paid the money to Stock-

dale under an attachment, *Stockdale v. Hansard* (1840), 11 Ad. & El. 253.

with a reprimand. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence. Messrs. Hansard were again ordered not to plead, and once more judgment was entered up against them. As the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions, protection was obtained for the publication of parliamentary papers by the Parliamentary Papers Act, 1840 (see p. 101).

Howard's  
second  
action.

In the contest with the House of Commons carried on by Stockdale and by his attorney, an action was commenced by Mr. Howard against Sir William Gosset and other officers of the house, known as Howard's second action, for taking him into custody, and conveying him to Newgate, in obedience to orders of the house and the Speaker's warrants.<sup>1</sup> The house gave the defendants leave to appear, and directed the attorney-general to defend them.<sup>2</sup> The circumstances which originated this action, and the results to which it led, may be briefly described. When Mr. Howard commenced his fourth action against Messrs. Hansard, he was ordered to attend the house : but having wilfully evaded the service of the order, the house, instead of resolving that he was in contempt, adopted the precedent of 31st March, 1771,<sup>3</sup> and, according to ancient custom, ordered that he should be sent for in the custody of the Serjeant,<sup>4</sup> and that Mr. Speaker should issue his warrant, which directed the Serjeant-at-arms "to take into your custody the body of the said Thomas Burton Howard." Howard was taken into custody on this warrant, and brought to the bar ; and it was for this arrest that the action of trespass was brought. In the argument it was contended, not only that the warrant was informal, but that the house had exceeded its jurisdiction in sending for a person in custody, without having previously adjudged him guilty of a contempt. The house might have sent for him, it was urged, and when he did not appear, have declared him in contempt, and committed him for his offence : but they had no right to bring him in custody, and thus imprison him upon a charge instead of on conviction. This doctrine, however, was not supported by the court : but judgment was given for the plaintiff because according to the judgment of the court the warrant was technically informal. The judges, however, considered that no question of privilege was involved in their decision ; and "that the

<sup>1</sup> 98 C. J. 59.

<sup>2</sup> 98 C. J. 118, 67 H. D. 3 s. 22. 975.

<sup>3</sup> 21 C. J. 705.

<sup>4</sup> 95 C. J. 30.

form of the warrants issued by Mr. Speaker, by order of the house, may be questioned and adjudged to be bad, without impugning the authority of the house, or in any way disputing its privileges." From this doctrine a committee of the Commons<sup>1</sup> entirely dissented. "They could not admit the right of any court of law to decide on the propriety of those forms of warrants which the house, through its highest officer, has thought proper to adopt on any particular occasion: but, in considering the course to be adopted by the house in consequence of this judgment, the committee recommended to the house that every legitimate mode of asserting and defending its privileges should be exhausted before it prevented, by its own authority, the further progress of the action." The house concurred in the opinion of the committee, and ordered that a writ of error be brought upon the judgment of the Court of Queen's Bench,<sup>2</sup> though, to avoid "submitting to abide by the judgment of the court of error, in the event of its being adverse," the Serjeant was not authorized to give bail, and execution was levied on his goods.<sup>3</sup> Judgment was given by the Court of Exchequer Chamber, on the writ of error, on the 2nd February, 1847, when the judgment of the court below was reversed by the unanimous opinion of all the judges of whom the court was composed. They found, "that the privileges involved in this case are not in the least doubtful, and the warrant of the Speaker is, in our opinion, valid, so as to be a protection to the officer of the house."<sup>4</sup>

In the case of *Lines v. Russell* (see p. 71), on the information of the Serjeant-at-arms, that he had been served with a writ and declaration, at the suit of William Lines, the house resolved, that the Serjeant have leave to plead to, and defend, the action. He pleaded accordingly, and it was held that he was justified by the warrant.<sup>5</sup>

In like manner, the Serjeant having informed the house, 5th May, 1882, that an action had been commenced against Mr. Erskine, the deputy Serjeant, by Mr. Bradlaugh, for an assault in removing him from the lobby, the house gave leave to Mr. Erskine to appear and plead in the action, and directed the attorney-general to defend him.<sup>6</sup> Judgment was given for the defendant on demurrer, it being held by the court that the order of the house furnished a sufficient justification of anything done by the defendant under it, and within its

<sup>1</sup> 2nd Report on Printed Papers, Parl. Pap. (H. C.) sess. 1845, No. 397, p. vi.

<sup>2</sup> 100 C. J. 642; see also 80 H. D. 3 s. 1097, 81 ib. 1208.

<sup>3</sup> 100 C. J. 562.

<sup>4</sup> Shorthand writer's notes, as printed by the House of Commons, Parl. Pap. (H. C.) sess. 1847, No. 39, p. 164.

<sup>5</sup> 107 C. J. 64. 68.

<sup>6</sup> 137 C. J. 182. 187.

scope, and on the 20th February, 1883, final judgment was given for the defendant <sup>1</sup>

Bradlaugh  
v. Gosset.

A subsequent attempt was made by Mr. Bradlaugh, in the form of an action against the Serjeant, to obtain an injunction from the High Court of Justice to restrain him from using force to prevent Mr. Bradlaugh from entering the house for the purpose of taking his seat. The house made the usual order for the defence of the Serjeant; <sup>2</sup> and on the 9th February, 1884, the Queen's Bench Division decided against Mr. Bradlaugh on the ground that the order under which the Serjeant acted related to the internal management of the procedure of the house, and that the Court of Queen's Bench had no power to interfere <sup>3</sup> (see also p. 131).

Present  
position of  
privilege.

Thus far the course adopted by the house has led, for the present, to a fortunate termination of its contests with the courts of law: but it must be acknowledged that the position of privilege is unsatisfactory. Assertions of privilege are made in Parliament, and denied in the courts; the officers who execute the orders of Parliament are liable to vexatious actions; and if verdicts are obtained against them, the damages and costs are paid by the Treasury. The parties who bring such actions, instead of being prevented from proceeding with them, by some legal process acknowledged by the courts, can only be coerced by an unpopular exercise of privilege, which does not stay the actions.

Remedy  
by statute.

A remedy has already been applied to actions connected with the printing of parliamentary papers (see p. 101); and a well-considered statute, founded upon the same principle, is the only mode by which collisions between Parliament and the courts of law can be prevented for the future. It is not desired that Parliament should, on the one hand, surrender any privilege that is essential to its dignity, and to the proper exercise of its authority; nor, on the other, that its privileges should be enlarged.<sup>4</sup> But some mode of enforcing them should be authorized by law, analogous to an injunction issued by a court of equity to restrain parties from proceeding with an action at common law, and even with a private bill, or an opposition to a private bill, in Parliament (see p. 609); and such a prohibition should be made binding, not only upon the parties, but upon the courts.

<sup>1</sup> Bradlaugh v. Erskine (1883), 47 L. T. 618, 31 W. R. 365.

<sup>2</sup> 138 C. J. 364. 370.

<sup>3</sup> 12 Q. B. D. 271.

<sup>4</sup> These views, expressed long since, receive confirmation from a letter of Lord Jeffrey, 2 Cockburn's Life, 353.



## BOOK II.

## PRACTICE AND PROCEEDINGS IN PARLIAMENT.

## CHAPTER VII.

## MEETING OF A NEW PARLIAMENT, &amp;c.

THE proceedings of Parliament are regulated by ancient usage, by established practice, and by the standing and sessional orders. Ancient usage, when not otherwise declared, is collected from the journals, from history and early treatises, and from the continued experience of practised members. Modern practice is often undefined in any written form; it is not recorded in the journals; it is not to be traced in the published debates; nor is it known in any certain manner but by personal experience, and by the daily practice of Parliament, in conducting its various descriptions of business.

Regulation of parliamentary proceedings by ancient usage and modern practice.

The orders and resolutions for regulating the proceedings of Parliament are recorded in the journals of both houses, and may be divided into standing orders, sessional orders and orders or resolutions, undetermined in regard to their permanence.

Both houses have agreed, at various times, to standing orders for the permanent guidance and order of their proceedings; which, if not vacated or repealed,<sup>1</sup> endure from one Parliament to another.<sup>2</sup>

Both houses, the Lords, under standing order No. 54, and the Commons, pursuant to usage, require that notice should be given of a resolution whereby a standing order is suspended; though, in the Commons, the rule is relaxed if necessity should arise (see

Suspension of standing orders.

<sup>1</sup> In the Lords, the rescinding of a standing order is termed "vacating;" in the Commons, "repealing." The earliest example of a standing order being repealed was on the 21st Nov. 1722, 20 C. J. 61.

<sup>2</sup> The resolutions of the House of Commons, 1st Dec. 1882, constituting standing committees, were made standing orders until the end of the next session;

and these standing orders were subsequently revived for the session of 1884, 139 C. J. 73 (see p. 416). Similarly the standing order of the 12th Aug. 1903, enabling proceedings on the Port of London Bill to be resumed in the following session, lapsed without a motion for its repeal at the end of the latter session, 134 Parl. Deb. 4 s. 777.

pp. 218, 221, n. 1).<sup>1</sup> In the Lords, the suspension of a standing order is obtained by a distinct resolution to that effect : in the Commons, besides suspension by resolution, a standing order can be temporarily set aside by an order of the house which prescribes a course of action inconsistent with its provisions.<sup>2</sup> The standing orders of the House of Lords are published from time to time by order of the house. The standing orders of the House of Commons relating to public and private business were first printed in a collected form by the order of the house during the session of 1810 ;<sup>3</sup> and the publication of the standing orders has been continued ever since.<sup>4</sup>

Sessional  
orders.

At the commencement of each session both houses agree to orders and resolutions, which are renewed from year to year.

Orders  
and reso-  
lutions.

The operation of orders or resolutions of either house, of which the duration is undetermined, is not settled upon any certain principle. By the custom of Parliament they would be concluded by a prorogation : but many of them are, as part of the settled practice of Parliament, observed in succeeding sessions, and by different Parliaments, without any formal renewal or repetition.<sup>5</sup>

Preroga-  
tive, &c.,  
and pro-  
cedure.

In addition to these several kinds of internal authority, the proceedings of both houses are governed in some few particulars by royal prerogative and statute.

Plan of  
the Second  
Book.

In this chapter it is proposed to present an outline of the general forms of procedure, in reference to the meeting of a new Parliament, adjournments and prorogations ; and, in future chapters, to proceed to the explanation of the various modes of conducting parliamentary

<sup>1</sup> See also S. O. No. 224 (Private Business).

<sup>2</sup> 352 H. D. 3 s. 1854.

<sup>3</sup> Parl. Pap. (H. C.) sess. 1810, No. 355.

<sup>4</sup> A manual of "Rules, Orders, and Forms of Proceeding of the House of Commons, relating to Public Business," drawn up by the Clerk of the house, and laid upon the table by the Speaker, was printed by order of the house in each succeeding Parliament from 1854 to 1896. "A Manual of Procedure in the Public Business of the House of Commons," was prepared by the Clerk of the house for the use of members, and laid on the table by the Speaker in 1904, 1908, and 1912.

<sup>5</sup> For examples of resolutions which are observed as permanent without being made standing orders may be cited the rules that the Speaker cannot take the

chair if forty members are not present (5th Jan. 1640) ; that a member may not speak twice to the same question (23rd June, 1604), that the same question be not proposed again during the same session (2nd April, 1604), and that no member may speak after the voices are fully taken ; the formal reading of a bill at the opening of a session ; several resolutions regarding procedure on petitions ; the resolution prohibiting members from engaging in the management of private bills ; the time for presenting estimates ; the rules of the committee of supply, and the means of securing a seat in the house by a member on a select committee. See also the Speaker's statement after he had put in force the resolution of the previous session regarding the exclusion of strangers, 4th March, 1876, 227 H. D. 3 s. 1405. 1420.

business, with as close an attention to methodical arrangement as the diversity of the subjects will allow. Where the practice of the two houses differs, the variation will appear in the description of each separate proceeding: but wherever there is no difference, one account of a rule or form of proceeding may be understood as applicable equally to both houses of Parliament.

On the day appointed by royal proclamation for the first meeting of a new Parliament for despatch of business<sup>1</sup> (see p. 51), the members of both houses assemble in their respective chambers. In the House of Lords, the lord chancellor acquaints the house "that his Majesty, not thinking it fit to be personally present here this day, has been pleased to cause a commission to be issued under the great seal, in order to the opening and holding of this Parliament." The five lords commissioners, being in their robes and seated on a form between the throne and the woosack, then command the gentleman usher of the Black Rod to let the Commons know that "the lords commissioners desire their immediate attendance in this house, to hear the commission read."

On receiving the message from Black Rod, the Clerk and the House of Commons go up to the House of Peers. The lord chancellor there addresses the members of both houses, and acquaints them that his Majesty has been pleased "to cause letters patent to be issued, under his great seal, constituting us, and other lords therein named, his commissioners, to do all things in his Majesty's name, on his part necessary to be performed in this Parliament." The letters patent are next read at length by the Clerk; after which the lord chancellor, acting in obedience to these general directions,<sup>2</sup> again addresses both houses, and acquaints them

"That his Majesty will, as soon as the members of both houses shall be sworn, declare the causes of his calling this Parliament; and it being necessary a Speaker of the House of Commons should be first chosen, that you, gentlemen of the House

<sup>1</sup> It may be observed that Parliament is generally summoned to meet on a Tuesday or Thursday, which are convenient days for the arrival of members. In 1809, Monday having been proposed for the meeting, Mr Wilberforce protested that it would involve travelling on Sunday, and the day was accordingly changed, 3 Wilberforce's Diary, 397. 398; Perceval, i. 302.

<sup>2</sup> On the opening of a new Parliament, the commissioners, without express direc-

tions to that effect in the commission, direct the Commons to elect a Speaker, and afterwards signify the king's approbation. But whenever a vacancy occurs in the office of Speaker, during a session, a special commission is required to signify the king's approbation. Mr. Speaker Shaw Lefevre, 1839; Mr. Speaker Brand, 1872, 127 C. J. 23; Mr. Speaker Peel, 1884, 139 ib. 75; Mr. Speaker Gully, 1895, 150 ib. 149; Mr. Speaker Lowther, 1905, 160 ib. 249.

of Commons, repair to the place where you are to sit, and there proceed to the appointment of some proper person to be your Speaker ; and that you present such person whom you shall so choose, here, to-morrow (at an hour stated), for his Majesty's royal approbation." <sup>1</sup>

Proceed-  
ings on  
change of  
ministry  
during  
recess.

In 1868, an exceptional course, in the opening of Parliament, was rendered necessary by peculiar circumstances. Parliament had been dissolved in November, and was summoned to meet on Thursday, 10th December. A week before this time, however, the ministers had resigned, and a new administration was formed, which was sworn in on the 9th December. To have prorogued Parliament, at so short a notice, would have been inconvenient ; while without any ministers in the House of Commons, and without previous consultation, it was not possible to open Parliament in the accustomed manner, with a Queen's speech and addresses from both houses. A precedent was found in December, 1765, when the Rockingham ministry having come into office during the recess, the king opened Parliament in a speech, in which he stated that, as matters of importance had occurred in the American colonies, he had called Parliament together to give an opportunity of issuing writs to supply the many vacancies which had occurred in the House of Commons, in order that Parliament might be full for the consideration of the weighty matters which would, after the Christmas recess, be brought before them. This precedent, however, was open to objection, as the speech, having all the usual solemnities, required addresses in answer, and was, in fact, the occasion of amendments and debates. The following course was therefore taken on this and on several subsequent occasions. Instead of a Queen's speech, the lords commissioners under the great seal for opening and holding the Parliament announced that, as soon as the members of both houses were sworn, the causes of her Majesty's calling this Parliament would be declared, and directed the Commons to choose their Speaker. After the election of the Speaker, and some days spent in the swearing in of members of both houses, the lords commissioners informed Parliament that they had it further in command to acquaint both houses that since the time when her Majesty had deemed it right to call them together, several vacancies had been caused by the acceptance of office from the Crown ; and that it

<sup>1</sup> The forms here described have been in use, with little variation, since the 12th Anne (1713). Before that time the sovereign usually came down on the first day of the new Parliament, a custom continued by George III. until 1790, 46 C. J. 6. On

one occasion Queen Anne came down three times, viz. to open Parliament, to approve the Speaker, and to declare the causes of summons in a speech from the throne (1707), 15 C. J. 393.

was her Majesty's pleasure that an opportunity should be given to issue writs for supplying the vacancies so caused, and that after a suitable recess they might proceed to the consideration of such matters as would then be laid before them.<sup>1</sup> This proceeding obviated the necessity of an address; the new writs were issued, and both houses adjourned.<sup>2</sup>

To proceed with the accustomed forms, the Commons withdraw immediately after the king's pleasure for the election of a Speaker has been signified, and return to their own house, while the House of Lords is adjourned during pleasure, to unrobe. On that house being resumed, the prayers, with which the business of each day is begun, are read, for the first time, by a bishop, or if no bishop be present, by any peer in holy orders; or if there be none present, then by the lord chancellor or lord on the woolsack, or by any peer who may be in the house.<sup>3</sup> The lord chancellor first takes and subscribes the oath singly, at the table. The clerk of the Crown delivers a certificate of the return of the sixteen representative peers of Scotland; and Garter king-of-arms the roll of the lords temporal; after which the lords may present their writs<sup>4</sup> at the table, and take and subscribe the oath required by law (see p. 150). The lord chancellor explains to the house the descent of a peer who comes to take the oath, on occasions when such explanation is necessary.<sup>5</sup> A peer of the blood royal takes the oath singly, like the lord chancellor.<sup>6</sup> At this time also peers may be introduced.<sup>7</sup>

Proceedings in the Lords.

The manner in which peers by descent take their seats is prescribed by Standing Order No. 13, which is as follows:—

"All peers of this realm by descent, being of the age of one and twenty years, have right to come and sit in the House of Peers without any introduction: no

First sitting in parliament of peers by descent.

<sup>1</sup> 17th Dec. 1765, 31 L. J. 225, 30 C. J. 437; 1868, 124 ib. 5; 1874, 129 ib. 5; 1880, 135 ib. 123. In 1886 and 1900 the sovereign's pleasure in this behalf was signified on the same day as the approbation of the Speaker, after an interval during which the Speaker and other members had taken the oath, 141 ib. 315; 155 ib. 407. See also Denison, 231.

<sup>2</sup> When a sitting of the house has been appointed for the issue of the new writs occasioned by a change of ministry, it has been ruled that no debate can be raised, nor business transacted of a contentious character, 7 Parl. Deb. 4 s. 451.

<sup>3</sup> Usually the junior bishop, i.e. the bishop last admitted to the house.

<sup>4</sup> A new writ is issued to every peer, except Scotch representative peers, at the commencement of each new Parliament. A peer by descent, before he can take his seat for the first time, proves his right, to the satisfaction of the lord chancellor.

<sup>5</sup> 120 L. J. 6; 121 ib. 6; 139 ib. 183; 145 ib. 95.

<sup>6</sup> 95 L. J. 6; 118 ib. 6; 124 ib. 410; 125 ib. 17.

<sup>7</sup> At other sittings of the house peers may be introduced after prayers have been said and before public business begins. A lord of appeal may also be introduced at any judicial sitting of the house during a prorogation, 39 & 40 Vict. c. 59, s. 8; 50 & 51 Vict. c. 70, s. 1.

such peers ought to pay any fee or fees to any herald upon their first coming into the House of Peers: no such peers may or shall be introduced into the House of Peers by any herald, or with any ceremony; but such peers may, if they shall think fit, upon taking their seats, lay on the table of the house the letters patent, by which the peerages in right of which they are severally summoned to Parliament shall have been granted, in order that the same may be entered on the journals of the house, and the said letters patent having been so entered, shall be delivered back to such peers."

Of peers claiming by special limitation.

S. O. 14.

Of new peers, &c.

Ceremony of introduction of peers.

Bishops.

Taking of seat by representative peer of Ireland.

A peer of the realm claiming by virtue of a special limitation in remainder, and not claiming by descent, must be introduced.<sup>1</sup>

Introduction is also necessary in the case of peers who have been advanced in the peerage, or who have been newly created by letters patent,<sup>2</sup> and in the case of those peers, other than peers by descent, who have received a writ of summons for the first time.<sup>3</sup>

Peers are introduced in their robes, between two other peers of their own dignity, also in their robes, and are preceded by the gentleman usher of the Black Rod (or in his absence by the yeoman usher), by Garter king-of-arms (or in his absence by Clarenceux king-of-arms, or any other herald officiating for Garter king-of-arms), and by the earl marshal and lord great chamberlain.<sup>4</sup> They present their writs or patents to the lord chancellor kneeling on one knee,<sup>5</sup> and having taken the oath at the table are conducted to their seats according to their dignity.

A bishop is introduced by two other bishops, presents his writ, on his knee, to the lord chancellor, and is conducted to his seat amongst the spiritual lords, but without some of the formalities observed in the case of the temporal peers.

When a new representative peer of Ireland has been elected, he is not introduced, but simply takes and subscribes the oath. The clerk of the Crown in Ireland attends with the writs and returns. His certificate, which is annexed, is read and entered on the journal.<sup>6</sup>

<sup>1</sup> 102 L. J. 6; 121 ib. 74; 125 ib. 420.

<sup>2</sup> If a newly-created peer dies without taking his seat, his son on succeeding to the peerage must be introduced, 118 L. J. 16.

<sup>3</sup> 77 L. J. 18; 106 ib. 12; 119 ib. 375.

<sup>4</sup> It is not necessary, however, that the two last officers should be present.

<sup>5</sup> 73 L. J. 569; 89 ib. 6. The lord chancellor lays his patent, kneeling, on the chair of state. For proceedings on the introduction of the Prince of Wales, see 95 L. J. 6, the Duke of Edinburgh, 98 ib. 382; the Duke of Connaught, 106 ib. 224;

the Duke of Albany, 113 ib. 256; the Duke of Clarence and Avondale, 122 ib. 373, and the Duke of York, 124 ib. 315.

<sup>6</sup> 73 L. J. 575. Where there is an equality of votes, the names of the peers who have received them are delivered on oath by the Clerk of the Crown in Ireland at the bar of the House of Lords. The names are written on similar pieces of paper and are put into a glass by the Clerk of the Parliaments. The peer whose name is first drawn out by the Clerk of the Parliaments is held to be duly elected, 140 L. J. 308.

The Commons, in the mean time, proceed to the election of their Speaker. A member, addressing himself to the Clerk (who, standing up, points to him, and then sits down), proposes to the house some other member then present, and moves that he "do take the chair of this house as Speaker," which motion is seconded by another member.<sup>1</sup> If no other member be proposed as Speaker, the motion is ordinarily supported by an influential member (generally the leader of the House of Commons), and the member proposed is called by the house to the chair, without any question being put.<sup>2</sup> He now stands up in his place and expresses his sense of the honour proposed to be conferred upon him and submits himself to the house; the house again unanimously call him to the chair, when his proposer and seconder take him out of his place and conduct him to the chair. If another member be proposed, a similar motion is made and seconded in regard to him; and both the candidates address themselves to the house. A debate ensues in relation to the claims of each candidate, in which the Clerk continues to act the part of the Speaker, standing up and pointing to the members as they rise to speak, and then sitting down. When this debate is closed, the Clerk puts the question that the member first proposed "do take the chair of this house as Speaker," and if the house divide, he directs one party to go into the right lobby, and the other into the left lobby, and appoints two tellers for each. If the majority be in favour of the member first proposed, he is at once conducted to the chair: but if otherwise, a similar question is put in relation to the other, which being resolved in the affirmative, that member is conducted to the chair by his proposer and seconder.<sup>3</sup> According to usage, the two members who are proposed for the chair take part in the division, each member giving his vote in favour of his rival.<sup>4</sup>

Election  
of a  
Speaker  
by the  
Commons.

<sup>1</sup> Mr. Pitt was desirous of proposing Mr. Addington himself: but Mr. Hatsell, on being consulted, said, "I think that the choice of the Speaker should not be on the motion of the minister. Indeed, an invidious use might be made of it, to represent you as the friend of the minister, rather than the choice of the house." Mr. Pitt acknowledged the force of this objection; Sidmouth, i. 78. A county and a borough member are generally selected for proposing and seconding the Speaker. In 1868, a borough and a university member performed this office. When a Speaker is re-elected without opposition,

it has been usual for the proposer and seconder to be taken from different sides of the house, as in 1852, 1859, 1866, 1868, 1874, 1880, 1886, 1892, 1895 (sess. II.), 1900 (sess. II.), 1906, 1910, and 1911.

<sup>2</sup> 2 Hatsell, 218; 112 C. J. 119; 121 ib. 9; 139 ib. 74; 141 ib. 315; 147 ib. 412; 150 ib. 340; 155 ib. 406; 160 ib. 249; 161 ib. 5; 165 ib. 5; 166 ib. 5.

<sup>3</sup> 90 C. J. 5.

<sup>4</sup> Election of Mr. Abercromby, 19th Feb. 1835, 26 H. D. 3 s. 56. Election of Mr. Shaw Lefevre, 94 C. J. 274, Division List, 27th May, 1839, No. 75. On the occasion of the election of Mr. Gully, 10th

Speaker  
elect  
returns  
thanks.

The Speaker elect, on being conducted to the chair, stands on the upper step, and expresses "his grateful thanks," or "his humble acknowledgments," "for the high honour the house had been pleased to confer upon him;" and then takes his seat.<sup>1</sup> The mace, which up to this time has been under the table, is now laid upon the table, where it is always placed during the sitting of the house with the Speaker in the chair.<sup>2</sup> Mr. Speaker elect is then congratulated by some leading member; he puts the question for adjournment and, when the house adjourns, leaves the house without the mace before him.

Royal ap-  
probation  
of the  
Speaker  
elect.

The house meets on the following day, and Mr. Speaker elect takes the chair and awaits the arrival of Black Rod from the lords commissioners. When that officer has delivered his message, Mr. Speaker elect, with the house, goes up to the House of Peers, and acquaints the lords commissioners

"That in obedience to his Majesty's commands, his Majesty's faithful Commons, in the exercise of their undoubted right and privilege, have proceeded to the election of a Speaker, and as the object of their choice he now presents himself at your bar, and submits himself with all humility to his Majesty's gracious approbation."

In reply, the lord chancellor assures him of his Majesty's sense of his sufficiency, and "that his Majesty most fully approves and confirms him as the Speaker."<sup>3</sup>

Lays  
claim to  
the privi-  
leges of  
the Com-  
mons.

When the Speaker has been approved, he lays claim, on behalf of the Commons, "by humble petition to his Majesty, to all their ancient and undoubted rights and privileges," which being confirmed, the Speaker, with the Commons, retires from the bar of the House of Lords.

Speaker  
elected for  
the whole  
Parlia-  
ment.

The Speaker, thus elected and approved, continues in that office during the whole Parliament, unless in the mean time he resigns or is removed by death. If the vacancy in the chair is caused by the

April, 1895, both candidates abstained from voting. In accordance with precedent government tellers were appointed.

<sup>1</sup> 90 C. J. 5; 108 ib. 7; 112 ib. 119; 135 ib. 123; 139 ib. 74; 141 ib. 315; 147 ib. 412; 150 ib. 149. 340; 155 ib. 406; 160 ib. 249; 161 ib. 5; 165 ib. 5; 166 ib. 5.

<sup>2</sup> The present mace dates from the restoration of Charles II., when a new mace was ordered. 21st May, 1660, 8 C. J. 39. After the death of Charles I., in 1648, a new mace had been made, which was the

celebrated "bauble" taken away by Cromwell's order on the 19th April, 1653, and restored on the 8th July of the same year, 6 ib. 166; 7 ib. 282.

<sup>3</sup> 80 L. J. 8; 89 ib. 6, &c. It was formerly customary for the Speaker elect to declare that he felt the difficulties of his high and arduous office, and that, "if it should be his Majesty's pleasure to disapprove of this choice, his Majesty's faithful Commons will at once select some other member of their house, better qualified to fill the station than himself."



Speaker's acceptance of office, protracted illness or death, the Clerk, at the ensuing meeting of the house, announces the death of the Speaker,<sup>1</sup> or reads a letter which the Speaker, stating the cause of his retirement,<sup>2</sup> has addressed to the Clerk. Immediately after the announcement has been made, the mace is brought into the house by the Serjeant and is laid under the table. A member then rises, and, addressing the Clerk, moves the adjournment of the house, who puts the question, "by the direction of the house." The Speaker, on other occasions, informs the house of the cause that compels his retirement from the chair.<sup>3</sup>

In the event of a vacancy during the session, similar forms are observed in the election and approval of a Speaker;<sup>4</sup> except that, instead of his Majesty's desire being signified by the lord chancellor in the House of Lords, a minister of the Crown, in the Commons, acquaints the house that his Majesty "gives leave to the house to proceed forthwith to the choice of a new Speaker;"<sup>5</sup> and when the Speaker has been chosen, the same minister acquaints the house that it is his Majesty's pleasure that the house should present their Speaker to-morrow (at an hour stated) in the House of Peers, for his Majesty's royal approbation.<sup>6</sup> Mr. Speaker elect puts the question for adjournment, and, when the house adjourns, he leaves the house without the mace before him. On the following day, Mr. Speaker elect takes the chair, after prayers have been read, and awaits the arrival of Black Rod from the royal commissioners, by whom the royal approbation is given under a commission for that purpose, with the same forms as at the meeting of a new Parliament, except that the claim of privileges is omitted.<sup>7</sup>

<sup>1</sup> 44 C. J. 45.

<sup>2</sup> 44 C. J. 434; 56 ib. 33; 57 ib. 92; 72 ib. 306.

<sup>3</sup> Mr. Speaker Manners Sutton, 87 C. J. 534; Mr. Speaker Abercrombie, 94 ib. 271; Mr. Speaker Shaw Lefevre, 112 ib. 89; Mr. Speaker Denison, 127 C. J. 9; Mr. Speaker Brand, 139 ib. 68; Mr. Speaker Peel, 150 ib. 139; Mr. Speaker Gully, 160 ib. 243.

<sup>4</sup> These forms preclude the proposal of any member as Speaker during the session, who has not taken the oaths and his seat. See case of Mr. Charles Dundas, proposed by Mr. Sheridan, 11th Feb. 1801, 35 Parl. Hist. 951. In 1822, this consideration prevented Mr. Speaker Manners Sutton from vacating his seat in order to stand

for the University of Cambridge, 1 Court and Cabinets of Geo. IV. 394; Colchester, iii. 260.

<sup>5</sup> 94 C. J. 274; 127 ib. 23; 139 ib. 74; 150 ib. 149; 160 ib. 249. For early instances of proceedings on the death of a Speaker, see D'Ewes, 95 120; 1 C. J. 116; 1 Parl. Hist. 811.

<sup>6</sup> In 1895 and in 1905 the Speaker was elected on the day upon which the house adjourned for Easter and Whitsuntide respectively, and was presented for the sovereign's approbation on the first day on which the house met after the adjournment, 150 C. J. 149; 160 ib. 249.

<sup>7</sup> 71 L. J. 308; 11 C. J. 272; 94 ib. 274; 127 ib. 23; 139 ib. 74; 150 ib. 149; 160 ib. 249. On the election of Mr.

Vacancy  
during the  
session.

Excep-  
tions to  
these  
forms.

The ceremony of receiving the royal permission to elect a Speaker, and the royal approbation of him when elected, has been constantly observed, except during the Civil War and the Commonwealth, and on three other occasions, when from peculiar circumstances it could not be followed.

1. Previous to the Restoration in 1660, Sir Harbottle Grimston was called to the chair without any authority from Charles II., who had not yet been formally recognized by the Convention Parliament. 2. On the meeting of the Convention Parliament on the 22nd January, 1688, James II. had fled, and the Prince of Orange had not yet been declared king; when the Commons chose Mr. Henry Powle as Speaker, by their own authority. 3. Mr. Speaker Cornwall died on the 2nd January, 1789, at which time George III. was mentally incapable of attending to any public duties; and on the 5th, the house proceeded to the choice of another Speaker, who immediately took his seat and performed all the duties of his office.<sup>1</sup>

So strong had been the sense of the Commons, of the necessity of having their choice confirmed, that in 1647, when the king had been delivered up by the Scots, and was under the guard of the Parliament and the army, they resorted to the singular expedient of presenting their Speaker, Mr. Henry Pelham, to the Lords, who signified their approval.<sup>2</sup>

Royal ap-  
probation  
refused.

The only instance of the royal approbation being refused was in the case of Sir Edward Seymour, in 1678.<sup>3</sup> Sir John Popham, indeed, had been chosen Speaker in 1449, but his excuse (see p. 146, n. 3) being admitted by the king, another was chosen by the Commons in his place; <sup>4</sup> and Sir Edward Seymour, who knew that it had been determined to take advantage of his excuse, purposely avoided making any, so as not to give the king an opportunity of treating him as his predecessor had been treated in a former reign.

Addington, in 1789, the king himself came down to the House of Lords, to signify his approbation in person, 44 C. J. 435; Sidmouth, i. 68.

<sup>1</sup> 8 C. J. 1; 10 ib. 9; 44 ib. 45.

<sup>2</sup> 5 C. J. 259, 260.

<sup>3</sup> 6th March, 1678, 4 Parl. Hist. 1092; 6 Grey Deb. 404, *et seq.*, 424. Mr. Parry inadvertently states that Mr. Serjeant Gregory was elected on that day, and rejected by the king (Parliaments and Councils of England, 586): but the latter was not elected until the 17th, after a short

prorogation, by which the contention between the court and the Commons, arising out of the disapproval of Sir E. Seymour, had been compromised.

<sup>4</sup> 1 Parl. Hist. 385; 5 Rot. Parl. 171. The excuse was genuine. Sir John Popham had been wounded in the wars of the late reigns. See also the case of John Cheyne, 1st Henry IV., 1399, who excused himself on account of illness, after he had been approved by the king, 3 Rot. Parl. 424.

The Speaker, who has been elected at the commencement of a Parliament, on returning from the Lords, reports to the house his approbation by the king and the confirmation of their privileges and "repeats his most respectful acknowledgments to the house for the high honour they have done him."<sup>1</sup> He then puts the house in mind that the first thing to be done is to take and subscribe the oath required by law; and himself first, alone, standing upon the upper step of the chair, takes and subscribes the oath accordingly; in which ceremonies he is followed by the other members who are present. On the following day, the daily prayers are read, for the first time, by Mr. Speaker's chaplain;<sup>2</sup> and the Speaker, if the necessity arises, counts the house, and cannot take the chair unless forty members are present; as the oath must, under section 3 of the Parliamentary Oaths Act, 1866, be taken whilst a full House of Commons is duly sitting, with their Speaker in his chair.<sup>3</sup> The members continue to take the oath on that and the succeeding day, after which the greater part are sworn and qualified to sit and vote.

The oaths of allegiance, supremacy and abjuration, were formerly prescribed by the statutes 30 Chas. II. stat. 2, 13 Will. III. c. 6, and 1 Geo. I. stat. 2, c. 13; and were required to be taken by every

Oaths  
formerly  
taken.

<sup>1</sup> A Speaker who has been elected in the course of a session reports on returning from the House of Lords his approbation by the king, and repeats his acknowledgments to the house. The appointed business for the day is then entered upon, 150 C. J. 149; 160 ib. 249; 161 ib. 5; 165 ib. 5; 166 ib. 5.

<sup>2</sup> 135 C. J. 123; 150 ib. 341; 155 ib. 408. In case of the accidental absence of the chaplain, Mr. Speaker reads prayers, as took place 8th May, 1856, 26th July, 1858, 31st March, 1860, and 10th September, 1909. No entry is made of the occasion in the journal. Both houses of Parliament use the same form of prayer. On the Restoration in 1660, it was referred to the Committee of Privileges by the House of Lords to consider of what prayers were formerly used in the house. On their report the use of the old form of prayers was revived (11 L. J. 36. 50), and the same form was, presumably, in the absence of direct evidence, adopted, at that time, by the Commons (Memorandum prepared by the late Mr. James B. Bull, the clerk of the journals of the House of Commons, 1871-95). Chaplains, or ministers, were first

appointed "to pray with the house daily," during the Long Parliament, 3 C. J. 365; 7 ib. 366. 424. 595. Before that time prayers had been read by the Clerk, and sometimes by the Speaker. On the 23rd March, 1603, prayers "were read by the Clerk of the house (to whose place that service anciently appertains), and one other special prayer, fitly conceived for that time and purpose, was read by Mr. Speaker; which was not of duty or necessity, though heretofore of late time the like hath been done by other Speakers," 1 C. J. 150. On the 8th June, 1657, there being no minister present, and it being uncertain whether the Speaker or Clerk should read prayers, the house proceeded to business without any prayers, Burton, ii. 191.

<sup>3</sup> Certain members took the oath, 5th June, 1855, while the chair was occupied by the chairman of ways and means, as deputy Speaker, before the arrangement was confirmed by statute (see p. 181). Doubts were raised as to the validity of an oath administered in the absence of the Speaker. An Act was accordingly passed to establish the legality of the proceeding, 18 & 19 Vict. c. 33.

member. By the Roman Catholic Relief Act, 1829 (10 Geo. IV. c. 7), a special oath was provided for Roman Catholic members.

One oath substituted for former oaths.

By the 21 & 22 Vict. c. 48, one oath for Protestant members was substituted for the oaths of allegiance, supremacy and abjuration; and by the Parliamentary Oaths Act, 1866 (29 & 30 Vict. c. 19), a single oath was prescribed for members of all religious denominations. For this oath the Promissory Oaths Act, 1868, substituted the oath which with the necessary alteration in the sovereign's designation<sup>1</sup> is now in the following form:—"I — do swear that I will be faithful and bear true allegiance to his Majesty King George, his heirs and successors, according to law. So help me God."<sup>2</sup>

Time and manner of taking the oath.

A member who desires to do so may take the oath in this form and kiss the book, but the ordinary form and manner of administering and taking the oath are prescribed by section 2 of the Oaths Act, 1909 (9 Edw. VII. c. 39). Under this section the person taking the oath holds the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and says or repeats after the officer administering the oath the words, "I swear by Almighty God that . . .", followed by the words of the oath prescribed by law. A member may also take the oath with uplifted hand in the manner usually followed in Scotland.<sup>3</sup>

Lords.  
S. O. 16  
(H. L.)

The oath or affirmation is taken or made by members of the House of Peers at any convenient time when the House is sitting, either for judicial or other business.

Commons.  
S. O. 84,  
Appendix  
I.

Members of the House of Commons may take and subscribe the oath at any time during the sitting of the house, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of: but no debate or business can be interrupted for that purpose.<sup>4</sup>

Affirmation in lieu of oath.

Members who object to be sworn may avail themselves of the power granted by section 1 of the Oaths Act, 1888 (51 & 52 Vict. c. 46), which enacts that a solemn affirmation may be made in lieu of an oath by every person who states, as the ground of such objection, either that he has no religious belief or that the taking of an oath is contrary to his religious belief.

Right of a member to take the oath.

On the occasion of a member coming to the table to be sworn, 26th July, 1858, a member rose to speak upon a point of order: but Mr. Speaker Denison maintained "that the taking of his seat by a

<sup>1</sup> 31 & 32 Vict. c. 72, s. 10.

<sup>2</sup> 31 & 32 Vict. c. 72, ss. 2. 8.

<sup>3</sup> 51 & 52 Vict. c. 46, s. 5.

<sup>4</sup> 169 Parl. Deb. 4 s. 159. 316.

member is a matter of privilege, and ought not to be interrupted by any discussion whatever.”<sup>1</sup> Nor can any appeal be made to obtain the interference of the Speaker (see p. 156) to stay a member from taking the oath on any ground whatever.<sup>2</sup>

When the oaths of allegiance and supremacy were required, members who refused to take them were adjudged by the house to be disqualified by the statutes from sitting, and new writs were issued in their room. Soon after the Revolution of 1688, Sir H. Mounson and Lord Fanshaw refused to take the oaths and were discharged from being members of the house; and on the 9th January following, Mr. Cholmly, who said he could not *yet* take the oaths, was committed to the Tower for his contempt.<sup>3</sup> The most remarkable precedent is that of Mr. O’Connell, who had been returned for the county of Clare, in May, 1829, before the passing of the Roman Catholic Relief Act, 1829 (10 Geo. IV. c. 7). On the oaths being tendered to him by the Clerk, he refused to take the oath of supremacy, and claimed to take the new oath contained in the Roman Catholic Relief Act, which had been substituted for the other oaths, as regards Roman Catholic members to be returned after the passing of the Act. Mr. O’Connell was afterwards heard upon his claim: but the house resolved that he was not entitled to sit or vote, unless he took the oath of supremacy. Mr. O’Connell persisted in his refusal to take that oath, and a new writ was issued for the county of Clare.<sup>4</sup>

The only legal obstacle which, prior to 1858, prevented a Jew from sitting and voting in Parliament, arose from the words, “upon the true faith of a Christian,” at the end of the oath of abjuration. In 1850, Baron Lionel Nathan de Rothschild, who during the two previous sessions had been one of the members for the city of London, but had not taken the oaths and his seat, was admitted to be sworn on the Old Testament, being the form most binding on his conscience. Having taken the oaths of allegiance and supremacy, he proceeded to take the oath of abjuration, but omitted the concluding words, “on the true faith of a Christian,” “as not binding on his conscience,”

<sup>1</sup> 151 H. D. 3 s. 2106. For the circumstances which arose on Mr. Bradlaugh’s first claim to take the oath, see p. 153.

<sup>2</sup> In one case, an attempt was made to obtain from a member, who was about to bring forward a motion, a repudiation of statements made elsewhere, which were alleged to be at variance with the oath he

had taken: but the Speaker stated that it was no part of his duty to determine what was consistent with that oath, and that the terms of the motion were not in violation of any rules of the house, 210 H. D. 3 s. 252.

<sup>3</sup> 10 C. J. 131. 328; 5 Parl. Hist. 254.

<sup>4</sup> 84 C. J. 303. 311. 314. 325.

Refusal to  
take  
oaths.

Jews un-  
able to  
take the  
oaths until  
1858.  
Case of  
Baron  
Roths-  
child.

adding the words, "so help me God;" whereupon he was directed to withdraw. After debate, the house resolved that he was "not entitled to vote in this house, or to sit in this house during any debate, until he shall take the oath of abjuration, in the form appointed by law."<sup>1</sup> No new writ, however, was issued, as it appeared that the statutes by which the oath of abjuration was appointed to be taken did not attach the penalty of disability to the refusal to take that oath, but solely to the offence of sitting and voting without having taken it.<sup>2</sup>

Case of  
Mr. Alder-  
man Salo-  
mons.

In 1851, Mr. Alderman Salomons, having been returned for the borough of Greenwich, pressed his claim even further than Baron Rothschild. He was sworn on the Old Testament, and omitting the words, "upon the true faith of a Christian," in the oath of abjuration, concluded with the words, "so help me God." This omission being reported to the Speaker, he directed him to withdraw. On a subsequent day, while further proceedings in this case were under discussion, Mr. Salomons entered the house and took his seat within the bar, which he retained, although ordered by the Speaker and by the house to withdraw, until the Speaker directed the Serjeant to remove him below the bar. The Serjeant placed his hand upon Mr. Salomons and conducted him below the bar. In the meantime, however, he had not only sat during debates in the house, but had voted in three divisions. In this case, as in the last, the house did not think fit to issue a new writ; but, having refused to hear counsel on the matter, agreed to a resolution in the same form, declaring that he was not entitled to sit or vote.<sup>3</sup> The legal validity of this resolution was afterwards established, beyond further question, by judgments in the Court of Exchequer<sup>4</sup> and the Court of Exchequer Chamber.<sup>5</sup>

Admission  
of the  
Jews to  
Parlia-  
ment.

After repeated attempts to remove this disability from the Jews by legislation, an Act was at length passed in 1858, by which it was provided that either house might resolve that henceforth any person professing the Jewish religion may omit the words, "and I make this declaration on the true faith of a Christian."<sup>6</sup> Finally, by the Parliamentary Oaths Act, 1866, the words, "on the true faith of a

<sup>1</sup> 105 C. J. 584. 590. 612.

<sup>2</sup> 13 & 14 Will. III. c. 6; 6 Anne. c. 41; 6 Geo. III. c. 53; see also Report of Select Committee on Oaths of Members, Parl. Pap. (H. C.) sess. 1850, No. 268.

<sup>3</sup> 106 C. J. 372. 373. 381. 407.

<sup>4</sup> *Miller v. Salomons* (1852), 21 L. J. (ex.) 160; 7 Exch. 475.

<sup>5</sup> *Salomons v. Miller* (1853), 22 L. J. (ex.) 169; 8 Exch. 778. A writ of error was lodged in the House of Lords, but the parties did not apply for a hearing, 147 H. D. 3 s. 108.

<sup>6</sup> Proceedings on admission of the Barons de Rothschild, 113 C. J. 345; 114 ib. 59. 192.

Christian," were removed from the form of oath prescribed for the members of the House of Commons.

In 1693, John Archdale, a Quaker, having declined to take the oaths, "in regard to a principle of his religion," a new writ was issued in his room.<sup>1</sup> Subsequently to that case, several statutes permitting Quakers to make affirmations instead of oaths were passed;<sup>2</sup> and upon a general construction of these statutes, in 1833, Mr. Pease, a Quaker, was admitted to sit and vote, upon making affirmation to the effect of the oaths directed to be taken at the table.<sup>3</sup> This privilege was extended by various Acts, not only to Quakers, but also to Moravians and Separatists;<sup>4</sup> and now by the Oaths Act, 1888, the right to substitute an affirmation for an oath is conferred, not only on those who entertain a religious objection to an oath, but also to those who assert that they have no religious belief (see p. 150).

On the 3rd May, 1880, Mr. Bradlaugh, member for Northampton, claimed to make the affirmation by virtue of the Evidence Amendment Acts, 1869 and 1870. A select committee appointed to consider this claim reported that persons entitled under these Acts to make a declaration in courts of justice cannot be admitted to make an affirmation or declaration in the House of Commons. After this decision Mr. Bradlaugh, on the 21st May, came to the table to take the oath; but this being objected to on the ground of his claim to make an affirmation, which implied that an oath would have no binding effect on his conscience, a select committee was appointed to consider the matter.<sup>5</sup> The committee reported that "the house can, and, in the opinion of the committee, ought to prevent Mr. Bradlaugh going through the form" of taking the oath; though they recommended that he should be allowed to make the affirmation, subject to its legality being tested in a court of justice.<sup>6</sup> In accordance with this report, a motion was made, on the 21st June, to admit Mr. Bradlaugh to make an affirmation; to which an amendment was made, that, having regard to the reports of two select committees, he be not permitted to take the oath or make the affirmation.<sup>7</sup>

<sup>1</sup> 12 C. J. 386. 388.

<sup>2</sup> 6 Anne, c. 23; 1 Geo. I. st. 2, c. 6 and c. 13; 8 Geo. I. c. 6; 22 Geo. II. c. 46.

<sup>3</sup> 88 C. J. 41. See also report of the committee on his case, Parl. Pap. (H. C.) sess. 1833, No. 6.

<sup>4</sup> 3 & 4 Will. IV. cc. 49 and 82; 1 & 2 Vict. c. 77; 29 & 30 Vict. c. 19; 31 & 32 Vict. c. 72.

<sup>5</sup> 135 C. J. 124. 137; Parl. Pap. (H. C.) sess. 1880 (II), No. 159.

<sup>6</sup> Parl. Pap. (H. C.) sess. 1880 (II), No. 226.

<sup>7</sup> 135 C. J. 228. 234. This resolution was, by order of the house, 27th Jan. 1891, expunged from the journal (see p. 187), 146 C. J. 45.

Declarations by Quakers, &c.

Mr. Bradlaugh's affirmation, 1880.

Being now refused either the oath or affirmation, Mr. Bradlaugh again came to the table, on the 23rd June, and claimed to take the oath. On being formally acquainted with the recent resolution of the house, he desired to be heard upon his claim; and the house having resolved that he be heard at the bar, he was heard accordingly, and withdrew. When Mr. Speaker afterwards informed him that the house had made no further order concerning his claim and directed him to withdraw, Mr. Bradlaugh insisted upon his right, as a duly-elected member, to take the oath and his seat, and refused to withdraw. The house ordered his withdrawal, but he refused to obey the order; and upon a direction given by the Speaker the Serjeant, placing his hand upon Mr. Bradlaugh, conducted him below the bar. Mr. Bradlaugh, however, again advanced within the bar, asserting his determination to resist the order of the house, and he was committed to the custody of the Serjeant.<sup>1</sup> On the following day Mr. Bradlaugh was discharged.

S. O. 85,  
Appendix  
I.

On the 1st July, a standing order was passed, which allows a member claiming to be a person, for the time being, permitted to make an affirmation, to make it without question, subject to any liability by statute, and under this order, on the 2nd July, Mr. Bradlaugh took his seat: but upon an action for penalties, the High Court of Justice adjudged that Mr. Bradlaugh had not qualified himself to sit by taking the affirmation, and this judgment was affirmed by the Court of Appeal.<sup>2</sup> Having already sat and voted, his seat was vacant, unless the judgment should be reversed by the House of Lords; and, without awaiting further steps in the suit, he agreed to the issue of a new writ, because by his action he had vacated his seat.<sup>3</sup>

Mr. Brad-  
laugh's  
oath, 1881.

Being returned a second time, he came to the table, on the 26th April, 1881, to take the oath; and henceforward, until the close of the Parliament, in November, 1885, the house enforced the decisions expressed by the two select committees who had considered Mr. Bradlaugh's claim first to make an affirmation, and then to take the oath; and whenever Mr. Bradlaugh came to the table, time after time, to assert his right to take his seat, the house determined, by

<sup>1</sup> 135 C. J. 235.

<sup>2</sup> *Clarke v. Bradlaugh* (1881), 7 Q. B. D. 38. 61; 50 L. J. (Q. B.) 342.

<sup>3</sup> 136 C. J. 171. Upon appeal to the Lords, he obtained judgment, 9th April,

1883, that, under the statute creating the penalty, the Crown alone could maintain a suit for its recovery, *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354.



repeated resolutions, that he be not permitted to take either the oath or an affirmation.<sup>1</sup>

Mr. Bradlaugh, on the other hand, sought by every means in his power to resist the action taken by the house. He insisted on his right to take the oath and his seat, by presenting himself at the table for that purpose, though not called up by the Speaker, by refusing to obey the directions given from the chair and the orders of the house, that he should withdraw below the bar pursuant to the resolutions of the house. He thus asserted his determination to refuse obedience to the orders of the house and to resist by force the methods used to maintain those orders. The house, in consequence, ordered the Serjeant to remove Mr. Bradlaugh from the house until he undertook to create no further disturbance.<sup>2</sup> On one occasion, by the direction of the Speaker, with the subsequent approval of the house, Mr. Bradlaugh was conducted by the Serjeant beyond the precincts of the house; <sup>3</sup> and was subsequently expelled (see p. 60).

Mr. Bradlaugh also sought to test the validity of his exclusion from a seat in the house, by bringing an action against the deputy Serjeant for an assault, and another action against the Serjeant (see p. 137). On two occasions, Mr. Bradlaugh suddenly advanced to the table, and read from a paper in his hand the words of the oath, and, having kissed a copy of the New Testament which he had brought with him, signed the paper, leaving the paper and the copy of the New Testament on the table.<sup>4</sup> The legal result of Mr. Bradlaugh's conduct was not, on the first occasion, subjected to the decision of a court of justice.<sup>5</sup> On the 11th February, 1884, however, he voted twice during the proceedings caused by the course that he had taken; and an action was brought against him by the Crown to enforce the penalty consequent upon the vote of an unsworn member.<sup>6</sup> The Court of Appeal decided, 28th January, 1885, that

Attorney  
General v.  
Brad-  
laugh.

<sup>1</sup> 136 C. J. 198, 227, 426; 137 C. J. 3. 87; 138 ib. 184, 332; 139 ib. 40, 63; 140 ib. 289. For occasions when Mr. Bradlaugh was heard at the bar, see 136 ib. 198, 137 ib. 3, 138 ib. 184.

<sup>2</sup> 136 C. J. 227. Under this order for exclusion, Mr. Bradlaugh was not permitted to enter the door of the house, but had access to all other parts of the building.

<sup>3</sup> 136 C. J. 426, 264 H. D. 3 s. 695.

<sup>4</sup> 137 C. J. 59; 139 ib. 40. On 7th March, 1882, the Speaker stated that,

having regard to the resolution of the house, if an attempt was made to introduce Mr. Bradlaugh, he was bound not to call upon him to come to the table, 267 H. D. 3 s. 390.

<sup>5</sup> A friendly suit was not tried to test the legality of this act, as, in the judgment of the court, the pleadings were collusive, *Gurney v. Bradlaugh*, 1882.

<sup>6</sup> 12th Feb. 1884, the Chiltern Hundreds granted to Mr. Bradlaugh (see p. 42).

the parliamentary "oath must be taken by a member, with the assent of the house, according to the requirements of the standing orders, and after he has been called upon by the Speaker to be sworn." The court also decided that a member of Parliament who does not believe in the existence of a Supreme Being, and upon whom an oath has no binding effect as an oath, but only as a solemn promise, is, owing to his want of religious belief, incapable by law of making and subscribing the parliamentary oath; and that if he took his seat and voted as a member, although he had gone through the form of making and subscribing the oath appointed by those statutes, he would be liable, upon information at the suit of the attorney-general, to the penalty imposed by the Parliamentary Oaths Act, 1866, s. 5.<sup>1</sup>

On the opening of the new Parliament, 13th January, 1886, the Speaker, directly after he had taken the oath, informed the house that he had received an appeal, in the form of letters addressed to him by several members, suggesting that the oath should not be administered to Mr. Bradlaugh until the house had expressed an opinion on the matter, in consequence of the decision by the Court of Appeal that Mr. Bradlaugh was incapable of taking an oath. The Speaker then stated that no case had been cited showing that a Speaker had, in the administration of the parliamentary oath, taken upon himself original and independent authority. If the Speaker had intervened in the matter, it was in consequence of the action of the house, based on something that had occurred during that Parliament. On this occasion, however, the Speaker reminded the house that they had met as a new Parliament. He knew nothing of the resolutions of the past; those resolutions had lapsed, and were of no effect. It was the right, the Speaker stated, the legal statutable obligation, of members when returned to the house, to come to the table and take the oath prescribed by statute; and that if a member came to the table, and offered to take the oath, he knew of no right whatever to intervene between the member and the performance of a legal and statutable duty; and that it would be his duty neither to prohibit Mr. Bradlaugh from coming, nor to permit a motion to be made standing between him and his taking the oath.<sup>2</sup>

<sup>1</sup> Attorney-General v. Bradlaugh (1885), 14 Q. B. D. 667.

<sup>2</sup> 141 C. J. 5, 302 H. D. 3 s. 21. On 9th March, 1882, the Speaker had stated that to object to any member taking the

oath except on grounds public or notorious, or within the cognizance of the house, would be simply vexatious, 267 H. D. 3 s. 442.

By the Acts 30 Chas. II. stat. 2, 13 Will. III. c. 6, and 1 Geo. I. stat. 2, c. 13, severe penalties and disabilities were inflicted upon any member of either house who sat or voted without having taken the oaths. By the Parliamentary Oaths Act, 1866, any peer voting by himself or his proxy, or sitting in the House of Peers without having taken the oath, is subject, for every such offence, to a penalty of 500*l.*; and any member of the House of Commons who votes as such, or sits during any debate after the Speaker has been chosen, without having taken the oath, is subject to the same penalty, and his seat is also vacated in the same manner as if he were dead. When members have neglected to take the oaths from haste, accident or inadvertence, Acts of indemnity have been passed to relieve them from the consequences of their neglect.<sup>1</sup> In the Commons, however, it is necessary to move a new writ immediately the omission is discovered, as the member's seat is vacated.<sup>2</sup>

Penalties  
for omission to  
take the  
oath.

But although a member may not sit and vote until he has taken the oath, he may vacate his seat by the acceptance of the Chiltern Hundreds and is entitled to all the other privileges of a member, being regarded, both by the house and by the laws, as qualified to serve, until some other disqualification has been shown to exist. Thus, on the 18th April, 1715, it was resolved "that Sir Joseph Jekyll was capable of being chosen of a committee of secrecy, though he had not been sworn at the Clerk's table."<sup>3</sup> On the 11th May, 1858, acting upon this precedent, the house added Baron Rothschild, who had then continued a member for eleven years without having taken the oaths, to the committee appointed to draw up reasons to be offered to the Lords for disagreeing to the Lords' amendments to the Oaths Bill,<sup>4</sup> at a conference of which he was appointed one of the managers.<sup>5</sup> On the 11th May, 1880, Mr. Bright, who had not

Members  
entitled to  
privileges  
before  
they are  
sworn.

<sup>1</sup> 45 Geo. III. c. 5 (Lord J. Thynne); 56 Geo. III. c. 48 (Earl Gower); 1 Will. IV. c. 8 (Lord R. Grosvenor); 5 Vict. c. 3 (Earl of Scarborough); Lord Plunket and Lord Byron 1880 private acts (not printed). In recent cases in the House of Lords Acts of Indemnity have not been introduced. Four peers having sat and voted in session 1906 without having taken the oath, 163 Parl. Deb. 4 s. 1291, 164 ib. 4, the matter was referred to the Select Committee on the Standing Orders of the House in session 1907, 139 L. J. 105. The Committee recommended the sending of a circular calling attention to the con-

sequences of sitting and voting without taking the oath to every peer before each new parliament, and at the beginning of every session to peers who have not taken the oath, Parl. Pap. (H. L.) sess. 1907, No. 95, p. iv.

<sup>2</sup> 60 C. J. 148; 67 ib. 286; 69 ib. 144; 71 ib. 42; 86 ib. 353. In Mr. Bradlaugh's case the Chiltern Hundreds (see p. 42) were accepted.

<sup>3</sup> 18 C. J. 59; 6 Chandler, Dec. 19; 7 Parl. Hist. 57; 2 Hatsell, 88, *n.*

<sup>4</sup> 113 C. J. 167, 150 H. D. 3 s. 336. 430.

<sup>5</sup> 113 C. J. 162.

yet made his affirmation, was appointed a member of the Parliamentary Oath Committee, upon which he served and voted, before he had made his affirmation.

It is usual for members who have not yet taken the oaths, to sit below the bar ;<sup>1</sup> and care must be taken that they do not, inadvertently, take a seat within the bar, by which they would render themselves liable to the penalties and disqualifications imposed by the statute.

Certificate  
of return

At the beginning of a Parliament, the Clerk of the Crown in Chancery delivers to the Clerk of the House of Commons a Return Book of the names of the members returned to serve in the Parliament. This book is sufficient evidence of the return of a member, and the oath is at once administered. If a member be elected after a general election, the clerk of the Crown sends to the Clerk of the house a certificate of the return received in the Crown Office ;<sup>2</sup> and the member must obtain a certificate from the Public Bill Office of the receipt of that certificate for production at the table, before the Clerk of the house will administer the oath. The neglect of this rule in 1848 gave rise to doubts as to the validity of the oaths taken by a member. Mr. Hawes was elected for Kinsale on the 11th March ; on the 15th, he was sworn at the table : but his return was not received by the clerk of the Crown until the 18th ; and it was questioned whether the oaths which he had taken before the receipt of the return had been duly taken. A committee was appointed to inquire into the matter, and reported that the non-return of the indenture to the Crown Office cannot affect the validity of the election or the right of a person duly elected, to be held a member of the house. The committee, at the same time, recommended a strict adherence to the practice of requiring the production of the usual certificate, or in cases in which that may be from accidental circumstances impossible

<sup>1</sup> When, 18th May, 1849, notice was taken that strangers were present, Baron Rothschild retained his seat below the bar, although he had not taken the oath ; and Mr. Bradlaugh was present below the bar, during many divisions, while forbidden to take the oath.

<sup>2</sup> During the session of 1889, the return of a member for Kennington, on Friday, 15th March, was not delivered at the Crown Office until the following Monday evening at nine o'clock. On the

meeting of the house on Monday, the 18th March, notice was taken that the return was not in the hands of the clerk of the Crown ; and the Speaker informed the house that he would ascertain from the clerk of the Crown the circumstances of the case, and that action should be taken thereon, if necessary. The delay in the delivery of the return had arisen in the post-office ; and the member took the oath during a subsequent sitting, 334 H. D. 3 s. 53.

of requiring satisfactory proof of the person's title to be admitted as a member.<sup>1</sup>

On the 10th May, 1858, Baron Rothschild having been returned upon a new writ, and not having brought up the certificate of his return, the certificate from the clerk of the Crown was ordered to be read, before a motion was made for adding Baron Rothschild to a committee.<sup>2</sup>

So soon as a member has been sworn, or has made his affirmation, he subscribes at the table the "test-roll," which is a roll of parchment folded into the shape of a book, headed by the oath and affirmation which he has taken or made; and the member is then introduced to the Speaker by the Clerk of the house.

Members returned upon new writs issued after the general election, take the oath or make their affirmation in the same manner; and under the resolution of the 23rd February, 1688, "in compliance with an ancient order and custom, they are introduced to the table between two members, making their obeisances as they go up, that they may be the better known to the house:"<sup>3</sup> but this practice is not observed in regard to members who, having been chosen at a general election, have established their claim to a seat by an election petition;<sup>4</sup> for they are supposed to have been returned at the beginning of the Parliament, when no such introduction is customary. Another difference of form is to be remarked, in reference to new members, and members seated on petition, when coming to be sworn. The former not being in the original Return Book, must bring with them, as already stated, a certificate of their return from the clerk of the Crown: but the latter having become members by the adjudication of an election judge, the clerk of the Crown amends the Return Book by order of the house (see p. 584).

In the event of the demise of the Crown (see p. 48), all the members of both houses again take the oath.<sup>5</sup>

Subscription of oath and affirmation.

Introduction of members elected after general election.

Demise of the Crown.

<sup>1</sup> Parl. Pap. (H. C.) sess. 1847-8, No. 256.

<sup>2</sup> 113 C. J. 162.

<sup>3</sup> 10 C. J. 34. On the 18th Feb. 1875, Dr. Kenealy, a new member, came to the table to be sworn, without the introduction by two members. The Speaker acquainted him with the order of the house, and, refusing to hear any comments from him, directed him to withdraw; whereupon the house resolved that the order be dispensed with, on this occa-

sion, 130 C. J. 52, 222 H. D. 3 s. 486.

<sup>4</sup> 2 Hatsell, 85, n.

<sup>5</sup> 69 L. J. 420 &c., 92 C. J. 490 &c.; 133 L. J. 4 &c., 156 C. J. 5 &c.; 142 L. J. 121 &c., 165 C. J. 150 &c. The House of Commons met in consequence of the death of King Edward VII. on Saturday, the 7th May, 1910, but, owing to the unavoidable absence of the Speaker, the Chairman of Ways and Means and the Deputy Chairman, adjourned till the following Monday when the Chairman of Ways and Means,

King's  
speech.

To return to the ordinary business of the session. When the greater part of the members of both houses are sworn, the causes of summons are declared by the king in person, or by commission. In every session but the first of a Parliament, as there is no election of a Speaker, nor any general swearing of members, the session is opened at once by the King's speech, without any preliminary proceedings in either house. Both houses usually meet at two o'clock in the afternoon. In the Commons prayers are said before the King's speech, but in the Lords usually not until their second meeting, later in the afternoon.<sup>1</sup> The Speaker, after prayers, sits in the Clerk's chair until Black Rod approaches the door, when he proceeds to his own chair to receive him. This form is observed, because no business can be transacted until Parliament has been opened by the Crown. In the absence of a quorum the message from the Crown would make a house (see p. 208).

When the king meets Parliament in person, he proceeds in state to the House of Lords, where, seated on the throne, adorned with his crown and regal ornaments, and attended by his officers of state (all the lords being in their robes, and standing until his Majesty commands them to be seated), he commands the gentleman usher of the Black Rod, through the lord great chamberlain, to let the Commons know "it is his Majesty's pleasure they attend him immediately, in this house." The usher of the Black Rod goes at once to the door of the House of Commons, which he strikes three times with his rod; and, on being admitted, he advances up the middle of the house towards the table, making three obeisances to the chair, and says, "Mr. Speaker, the king *commands* this honourable house to attend his Majesty immediately in the House of Peers." He then withdraws, still making obeisances; nor does he turn his back upon the house, until he has reached the bar. The Speaker, with the house, immediately goes up to the bar of the House of Peers;<sup>2</sup> upon which the king reads his speech to both houses of Parliament,

acting as Deputy Speaker, and other members took the oath, 165 C. J. 147. The Speaker took the oath at the first sitting of the house, at which he was present, 165 ib. 154.

<sup>1</sup> When a prince of the blood is to be introduced, prayers are said before the sovereign's arrival.

<sup>2</sup> If deemed expedient, the precedence of members in going to the House of Lords

on the opening and prorogation of Parliament by his Majesty, can be determined by ballot, in pursuance of resolutions, 106 C. J. 443. 445. For the arrangements made in session 1902 which have been adopted on subsequent occasions, see Report of the Joint Committee on Presence of the Sovereign in Parliament, Parl. Pap. (H. C.) sess. 1901, No. 212, p. x.

which is delivered into his hands by the lord chancellor, kneeling upon one knee.

When Queen Victoria met Parliament in person, on every occasion since the year 1866, the form of these proceedings was so far changed that her Majesty's speech, instead of being delivered by herself, was read by her chancellor, taking directions from her Majesty.<sup>1</sup> This was no more, indeed, than the revival of an ancient custom, there being numerous precedents of the lord chancellor or lord keeper addressing both houses, in the presence of a sovereign and by his command. Henry VIII., proud as he was of his royal state and personal accomplishments, always entrusted to his chancellor the task of addressing the Parliaments assembled in his presence.<sup>2</sup> On the 9th November, 1605, the chancellor made a speech concerning the recent plot in the presence of James I.<sup>3</sup> Charles I. also made his chancellors, and sometimes other councillors, his spokesmen,<sup>4</sup> and the same practice was pursued by Charles II.<sup>5</sup> The example exactly followed by Queen Victoria was that of George I., throughout whose reign the royal speech was delivered by the chancellor.<sup>6</sup>

When the King is not personally present, the causes of summons are declared by the lords commissioners. The usher of the Black Rod is sent, in the same manner, to the Commons, and acquaints the Speaker that "the lords commissioners *desire* the immediate attendance of this honourable house in the House of Peers, to hear the commission read";<sup>7</sup> and when the Speaker and the house have reached the bar of the House of Peers, the lord chancellor reads the royal speech to both houses. Until the end of the session of 1867, the lords commissioners' speech was framed as proceeding from themselves, and the sovereign's name was used throughout in the third person; but on that and subsequent occasions, the speech was that of the sovereign and was framed in the first person, and delivered by the lord chancellor, or one of the commissioners,<sup>8</sup> by the royal command.

By commission.

<sup>1</sup> In 1871, 1876, 1877, 1880, and 1886.

<sup>2</sup> See especially 21st Jan. 1509, 1 L. J. 3; 8th June, 1536, ib. 84; 6th Jan. 1541, ib. 164.

<sup>3</sup> 2 L. J. 357.

<sup>4</sup> 3 L. J. 435. 470. 637.

<sup>5</sup> 11 L. J. 240. 684; 12 ib. 287. 652.

<sup>6</sup> 20 L. J. 22, &c.

<sup>7</sup> On the 19th May, 1880, attention

being drawn to inadvertent use by the usher of the Black Rod of the word "require," the proper form was explained from the chair, 251 H. D. 3 s. 1221.

<sup>8</sup> 97 L. J. 639. At the prorogation, 10th Aug. 1872, the lord chancellor's sight being impaired, the speech was read by Earl Granville.

When the speech has been delivered the House of Lords is adjourned during pleasure. The Commons retire from the bar and, returning to their own house, pass through it, the mace being placed upon the table by the Serjeant, and the house reassembles at four o'clock.

Report of  
King's  
speech.

When the houses are resumed in the afternoon, the main business is for the lord chancellor in the Lords, and the Speaker in the Commons, to report the King's speech. In the former house, the speech is read by the lord chancellor, and in the latter by the Speaker, who states that, for greater accuracy, he has obtained a copy. But before this is done, it is the practice, in both houses, to read some

Bill read  
*pro formâ*.

bill a first time *pro formâ*, in order to assert their right of deliberating without reference to the immediate cause of summons. This practice, in the Lords, is enjoined by standing order No. 2. In the Commons the same form is observed pursuant to ancient custom.<sup>1</sup> In the Commons other business is constantly entered upon before the reading of the bill, as the issue of new writs, the consideration of matters of privilege,<sup>2</sup> the presentation of papers, the usual sessional orders and resolutions relating to elections (see p. 578) and witnesses (see p. 76), and the order to the Commissioners of Police which is also made by the House of Lords to keep free the passages through the streets leading to the Houses of Parliament (see p. 169). No petitions are presented; though questions may be asked of the ministers, generally relating to the business of the house, to urgent matters in foreign affairs, or recent action taken by the government.<sup>3</sup>

Sessional  
orders,  
&c., Ap-  
pendix I.

Address.

When the royal speech has been read, an address in answer thereto is moved in both houses. Two members in each house are selected by the administration for moving and seconding the address; and they appear in their places in levee dress, for that purpose. The

<sup>1</sup> 24th Jan. 1556, 1 C. J. 47; 4th April, 1571, when immediately after the return of the house from the House of Lords, where Queen Elizabeth had signified her approval of the Speaker, "one bill (accordingly to the usual course) had its first reading," D'Ewes, 156, 1 C. J. 82; 22nd March, 1603, "The first day of sitting, in every Parliament, some one bill, and no more, receiveth a first reading for form sake," 1 ib. 150. In 1794, Mr. Sheridan raised a debate upon the first reading of the bill, and the Speaker decided that he was in order; 31 Parl. Hist. 994.

<sup>2</sup> 95 C. J. 4; Mr. T. M. Healy's imprisonment,

138 ib. 4; the letter termed "the forged letter" (Mr. Parnell), 145 ib. 7; Mr. Bradlaugh's affirmation, 135 ib. 124; and his oath, 137 ib. 3; the action of the returning officer at the Leicester election, 30 Parl. Deb. 4 s. 54; the interference of a peer in an election, 141 Parl. Deb. 4 s. 71. See also proceedings on the opening of the session, in 1763, relative to the reading of the bill before the consideration of the question of privilege arising out of the *North Briton*, No. 45, 15 Parl. Hist. 1354.  
<sup>3</sup> 284 H. D. 3 s. 39; 293 ib. 57. 58; 341 ib. 41.



form of the address used to be an answer, paragraph by paragraph, to the speech. In both Lords and Commons, since the commencement of session 1890-91, the answer to the royal speech has been moved in the form of a single resolution, expressing their thanks to the sovereign for the most gracious speech addressed to both houses of Parliament, and amendments to the address are moved by way of addition thereto.<sup>1</sup> The transaction of public business is carried on whilst the proceedings on the address are in progress. Bills are introduced, committees are appointed, and, in session 1884, debate on the address was postponed from day to day, whilst a motion of censure on the government, regarding events in the Soudan, was under consideration.<sup>2</sup>

After the address has been agreed to, it is ordered to be presented to his Majesty, either by the whole house: or in the case of the address of the upper house "by the lords with white staves;"<sup>3</sup> and in the case of the address of the Commons by "such members of the house as are of his Majesty's most honourable privy council, or of his Majesty's household."<sup>4</sup> When the address in answer to the speech from the throne at the opening of Parliament<sup>5</sup> or an address on any other subject<sup>6</sup> (see p. 545) is to be presented by the whole house, the "lords with white staves" in the one house, and the privy councillors and members of the household in the other, are ordered "humbly to know his Majesty's pleasure when he will be attended" with the address. Each house meets when it is understood that this ceremony will take place and, after his Majesty's pleasure has been reported,<sup>7</sup> proceeds separately to the palace; and

Presentation of address.

<sup>1</sup> Since 1861, the appointment of a committee to prepare the address has been discontinued in the House of Lords. The committee formerly appointed in the Commons, to "draw up" an address, has been discontinued since Feb. 1888, pursuant to standing order No. 65 (see Appendix I.), as the address is moved in a form suitable for presentation, 146 C. J. 7. The addresses in sessions 1892 and 1896, both in Lords and Commons, contained expressions of condolence on the deaths of H.R.H. the Duke of Clarence and H.R.H. Prince Henry Maurice of Battenberg, 124 L. J. 7, 147 C. J. 10; 128 L. J. 16, 151 C. J. 10. In 1812, the address was moved as an amendment to a question for an address proposed by Sir F. Burdett, 21 H. D. 1 s. 18. 34. In 1894, an amendment

to the address having been carried, the address, as amended, was negatived, and another address was proposed by the leader of the house and agreed to, 149 C. J. 9. 11.

<sup>2</sup> 139 C. J. 46-59.

<sup>3</sup> Of the royal household.

<sup>4</sup> The members of the household were first added to the members ordered to present the address in the year 1899, 154 C. J. 54.

<sup>5</sup> 74 L. J. 8; 93 ib. 6; 96 C. J. 9; 97 ib. 9; 101 ib. 10; 116 ib. 16.

<sup>6</sup> 86 L. J. 85; 90 ib. 24; 129 ib. 255; 109 C. J. 169; 111 ib. 183; 113 ib. 31; 152 ib. 299.

<sup>7</sup> 74 L. J. 10; 96 C. J. 11; 97 ib. 11; 101 ib. 11; 109 ib. 170; 111 ib. 184.

care must be taken to make a house at the proper time to receive the communication of his Majesty's pleasure.<sup>1</sup> If, before the presentation of the address by the whole house, any circumstance should be communicated which would make it inconvenient for his Majesty to receive the house, the address is presented by the "lords with white staves" and privy councillors and members of the household.<sup>2</sup> The procedure upon the reception of the sovereign's answer to an address by Parliament is described more fully on p. 547.<sup>3</sup>

Places in  
the House  
of Lords.

In the upper house, under standing order No. 4, "the lords are to sit in the same order as is prescribed by the Act of Parliament, except that the lord chancellor sitteth on the woolsack as Speaker to the house."<sup>4</sup> This order is not usually observed with any strictness. The bishops always sit together in the upper part of the house, on the right hand of the throne: but the lords temporal are too much distributed by their offices, by political divisions and by the part they take in debate, to be able to sit according to their rank and precedence. The members of the administration sit on the front bench, on the right hand of the woolsack, adjoining the bishops: and the peers who usually vote with them occupy the other benches on that side of the house. The peers in opposition are ranged on the opposite side of the house; while many who desire to maintain a political neutrality sit upon the cross benches which are placed between the table and the bar.<sup>5</sup>

Ancient  
baronies.

If the eldest son of a peer be summoned to Parliament by the style of an ancient barony held by his father, he takes precedence

<sup>1</sup> From a neglect of this precaution, 6th Feb. 1845, Queen Victoria was kept waiting by the Commons for upwards of half an hour.

<sup>2</sup> (1844) 99 C. J. 12; (1869) 101 L. J. 28. 30. 35, 124 C. J. 32. 37. 42.

<sup>3</sup> Queen Victoria's answer to the address, 10th June, 1859, which contained the paragraph, added by way of amendment, affirming that her Majesty's then present advisers did not possess the confidence of the House of Commons, stated that her Majesty had thereupon taken measures for the formation of a new administration, 114 C. J. 219. On the occasion when, 11th Aug. 1892, a paragraph similar in form was added to the address, the usual order was made for the presentation of the address; but no answer from her Majesty was presented to the

house. When, 26th Jan. 1886, an amendment which occasioned a change of administration was added to the address, her Majesty's answer was of a wholly formal character, 141 C. J. 57.

<sup>4</sup> By 31 Hen. VIII. c. 10, the precedence of princes of the blood royal, and of the bishops, peers, and high officers of state, is defined. See also 1 Will. & Mary, c. 21, s. 2; 6 Ann. c. 11; 10 Ann. c. 8. Report from the committee of privileges on the place H.R.H. the Duke of Clarence and Avondale should occupy in the house, and similar report in the case of the Duke of York, 122 L. J. 361; 124 ib. 295.

<sup>5</sup> The standing order was enforced, 20th Jan. 1640, 10th Feb. 1640, and 1st Feb. 1771; 25 L. J. 572. 593; 33 ib. 47; see also 69 H. D. 3 s. 1806.

amongst the peers according to the antiquity of his barony ; whereas, if he be created by patent a baron, by a new style or title, he ranks as a junior baron.<sup>1</sup>

In the Commons no place is allotted to any member : but by custom the front bench, on the right hand of the chair, called the Treasury, or privy councillors' bench, is appropriated for the members of the administration. The front bench on the opposite side, though other members occasionally sit there, is reserved for the leading members of the opposition who have served in offices of state.<sup>2</sup> On the opening of a new Parliament, the members for the city of London claim, and generally exercise, the privilege of sitting on the Treasury, or privy councillors' bench. It is not uncommon for old members, who are constantly in the habit of attending in one place, to be allowed to occupy it without disturbance.<sup>3</sup>

Members who enjoy no place by usage or courtesy, except members serving on select committees, must, pursuant to standing orders Nos. 82 and 83, be present at prayers if they desire to secure a seat until the rising of the house ; nor may a member's name be affixed to a seat in the house before the hour of prayers.<sup>4</sup> Attempts to secure a seat, by placing cards on the seats before prayers, have been prevented by order of the Speaker to the Serjeant.<sup>5</sup> A member, however, who remains within the precincts of the house, may leave his hat or a card upon a seat, in order to indicate his intention of acquiring a right to the seat by a subsequent attendance at prayers ;<sup>6</sup> and pursuant to a resolution of the 23rd March, 1888, a member serving on a select committee, whilst in attendance on the committee, may, without being present at prayers, retain a seat in the house by affixing thereto a card, which is delivered to him for that purpose on his application. No seat can be secured by a card, paper, or gloves, placed thereon, except as a matter of courtesy and not of right.<sup>7</sup>

<sup>1</sup> Baron Mowbray, eldest son of the Duke of Norfolk, 32 Chas. II., was summoned by writ, and sat as premier baron, West, Inq. 49. See also the introduction of, and place assigned to, Lord Stanley in 1845, Lord Strafford in 1874, and Lord Lovaine in 1887, 77 L. J. 18 ; 106 ib. 12 ; 119 ib. 375.

<sup>2</sup> For the allocation of seats to a party by arrangement, see Mr. Speaker's remarks, 44 H. C. Deb. 5 s. 2267. 2507 ; 58 ib. 49. 1092.

<sup>3</sup> Members thanked by the house, by

courtesy retain their seats, 2 Hatsell, 94.

<sup>4</sup> Cards, with the words, " at prayers," printed on them, are upon the table, to receive the names of members seeking to secure their seats, pursuant to the standing orders, by placing the card in the receptacle on the back of the seat.

<sup>5</sup> 182 H. D. 3 s. 1765.

<sup>6</sup> 188 H. D. 3 s. 163 ; 191 ib. 698 ; 302 ib. 427 ; 30 Parl. Deb. 4 s. 1571 ; 58 ib. 558 ; 154 ib. 100 ; 157 ib. 207 ; 14 H. C. Deb. 5 s. 1642 ; 16 ib. 2331 ; 85 ib. 1425. 1647.

<sup>7</sup> 62 H. D. 3 s. 489 ; 252 ib. 1200.

Places in  
the Com-  
mons.

Secured at  
prayers.  
S. O. 82.  
83, Ap-  
pendix I.

Seats of  
members  
serving on  
select  
commit-  
tees.

Service of  
Parlia-  
ment.

Every member of the Parliament is under a constitutional obligation to attend the service of the house to which he belongs. A member of the upper house has the privilege of serving by proxy, by virtue of a royal licence which authorizes him to be personally absent and to appoint another lord of Parliament as his proxy : but since 1868, the use of this privilege has been discontinued (see p. 336). In the House of Commons, the personal service of every member is required. By the Act, 5 Rich. II. c. 4, "if any person summoned to Parliament do absent himself, and come not at the said summons (except he may reasonably and honestly excuse himself to our lord the king), he shall be amerced, or otherwise punished according as of old times hath been used to be done within the same realm, in the said case." The Act 6 Hen. VIII. c. 16, declared that no member should absent himself "without the licence of the Speaker and Commons, which licence was ordered to be entered of record in the book of the Clerk of the Parliaments appointed for the Commons' house." The penalty upon a member for absence was the forfeiture of his wages ; and although that penalty is no longer applicable, the legislative declaration of the duty of a member remains upon the statute-book. In 1554, informations were filed in the Court of Queen's Bench against several members who had seceded from Parliament, of whom six submitted to fines. Numerous orders are to be found in the journals, for summoning absent members to attend the service of the house.<sup>1</sup>

Attend-  
ance of  
members.

On ordinary occasions, however, the attendance of members upon their service in Parliament is not enforced by either house : but, when any special business is about to be undertaken, steps have been taken to secure their presence. In the House of Lords, however, the name of every lord who is present during the sitting of the house, is taken down each day by the Clerk of the house, and entered in the journal.

Lords  
sum-  
moned.

In the upper house, a method formerly in use for obtaining a larger attendance than usual was to order the lords to be summoned ; upon which a notice was sent to each lord who was known to be in town, to acquaint him "that all the lords are summoned to attend the service of the house" on a particular day.

Call of the  
House of  
Lords.

When any urgent business was deemed to require the attendance of the lords, under a usage now in abeyance, an order was made that

<sup>1</sup> 1 Parl. Hist. 625 ; 15th Aug. 1643, 3 March, 1715, 18 ib. 401 ; 17th Dec. 1783, C. J. 206 ; 6th Feb. 1688, 10 ib. 20 ; 15th 39 ib. 841 ; &c.

the house be called over ; and this order has been enforced by fines and imprisonment upon absent lords.<sup>1</sup> On some occasions the lord chancellor has addressed letters to all the peers, desiring their attendance, as on the illness of George the Third, 1st November, 1810.<sup>2</sup> The most important occasion on which the house was called over in modern times was in 1820, when the bill for the degradation of Queen Caroline was pending ; and by a resolution of the house, fines and imprisonment were imposed on such lords as should not attend the sittings of the house.<sup>3</sup> The lords were accordingly called over by the Clerk on each day during the pendency of that bill, beginning, according to ancient custom, with the junior baron. The custom of beginning with the junior baron applies to every occasion upon which the whole house is called over for any purpose within the house, or for the purpose of proceeding to Westminster Hall, or upon any public solemnity. When the house appoints a select committee, the lords appointed to serve upon it are named in the order of their rank, beginning with the highest ; and in the same manner, when a committee is sent to a conference with the Commons, the lord highest in rank is called first, and the other lords follow in the order of their rank.

When the House of Commons is ordered to be called over, it is usual to name a day which will enable the members to attend from all parts of the country, the interval between the order and the call varying from one day to six weeks.<sup>4</sup> If it be intended to enforce the call, not less than a week or ten days should intervene between the order and the day named for the call. The order for the house to be called over is accompanied by a resolution, " that such members as shall not then attend, be sent for, in custody of the Serjeant-at-arms." <sup>5</sup> On the day appointed for the call, the order of the day is read and is dealt with at the pleasure of the house. If proceeded with, the names are called over from the Return Book, according to the counties, which are arranged alphabetically. The members for a county are called first, and then the members for every city or borough within that county.<sup>6</sup> The counties in England and Wales

Call of the  
House of  
Commons.

Order in  
which  
names are  
called.

<sup>1</sup> 16 L. J. 16. 26. 31. 40, &c. All the cases in which this order has been enforced, and the various modes of enforcement, are collected in 53 L. J. 356, *et seq.*

<sup>2</sup> 18 H. D. 1 s. 1.

<sup>3</sup> 53 L. J. 364. The house was last called over on the occasion of the trial of Earl Russell, 18th July, 1901, 133 L. J. 287.

<sup>4</sup> 77 C. J. 101 ; 87 ib. 311.

<sup>5</sup> 12 C. J. 552 ; 16 ib. 565 ; 17 ib. 184, &c. It was formerly the custom to desire Mr. Speaker to write to the sheriffs, to summon the members to attend.

<sup>6</sup> Who is senior member for a place ? He who has sat longest in the house, or he who was returned at the head of the

are called first, and those of Scotland and Ireland in their order. This point is mentioned, because it makes a material difference in the time at which a member is required to be in his place.

When  
members  
are  
absent.

The names of members who do not answer when called are taken down by the Clerk of the house, and are afterwards called over again. If they appear in their places at this time, or in the course of the evening, it is usual to excuse them for their previous default; but otherwise, no excuse being offered, they are ordered to attend on a future day.<sup>1</sup> It is also customary to excuse them if they attend on that day, or if a reasonable excuse be then offered.<sup>2</sup> Non-attendance, no excuse being offered, may be punished by committal to the custody of the Serjeant, and the payment of his fees.<sup>3</sup> Instead of committing the defaulters, the house sometimes names another day for their attendance,<sup>4</sup> or orders their names to be taken down.<sup>5</sup> The attendance of members is generally ample; and a call is of little avail in taking the sense of the house, as there is no compulsory process by which members can be obliged to vote; <sup>6</sup> hence calls of the house have long since ceased to find favour; and no call of the house has been enforced since 1836.<sup>7</sup> On several subsequent occasions calls of the house have been ordered: but in every case the order was discharged or negatived. On the 10th July, 1855, and again on the 23rd March, 1882, motions for a call of the house were negatived.<sup>8</sup>

Leave of  
absence.

On the 3rd March, 1801, when a call of the house was deferred for a fortnight, it was ordered "that no member do presume to go out of town without leave of the house."<sup>9</sup> In the absence of any specific orders to that effect, members are presumed to be in attendance upon their service in Parliament. When they desire to remain in the country, they should apply to the house for "leave of absence;" for which sufficient reasons must be given, such as urgent business,

poll? This question arose in 1866, between the lord advocate (Mr. Moncrieff) and Mr. McLaren, members for Edinburgh; and also between Mr. Hastings Russell and Colonel Gilpin, members for Bedfordshire. In each case the junior member, in point of service, being returned at the head of the poll, was entered first in the Return Book. Earl Russell and the Speaker concurred in opinion that the member who stands first in the Return Book must be accounted the senior member.—Denison, 207.

<sup>1</sup> 80 C. J. 147; 84 ib. 106.

<sup>2</sup> Illness of the member or of a near relation, or public service, 80 C. J. 130; absence abroad, 91 ib. 278.

<sup>3</sup> 80 C. J. 150. 153. 157.

<sup>4</sup> 91 C. J. 278.

<sup>5</sup> 90 C. J. 132. For infliction of fines see 1 ib. 300. 862; 2 ib. 294; 9 ib. 75.

<sup>6</sup> 123 H. D. 3 s. 266. 302.

<sup>7</sup> Mr. Whittle Harvey's motion on the Pension List (1836), 91 C. J. 265.

<sup>8</sup> 110 C. J. 367; 137 ib. 117. Motions discharged: 93 C. J. 300; 94 ib. 121. 302; 95 ib. 267; 108 ib. 53.

<sup>9</sup> 56 C. J. 103.

ill health, illness in their families, or domestic affliction. Upon these and other grounds leave of absence is given, though it has been refused.<sup>1</sup> A member forfeits his leave of absence if he should attend the service of the house before its expiration.

Attendance upon the service of Parliament includes the obligation to fulfil the duties imposed upon members by the orders and regulations of the house. Unless leave of absence has been obtained, a member cannot excuse himself from attending on a committee, when his attendance, as in the case of a private bill committee, is made compulsory by standing or other orders.<sup>2</sup>

Obligation to attend committees.

To facilitate the attendance of members without interruption, both houses, at the commencement of each session, by order, give directions that the commissioners of the police of the metropolis shall keep, during the session of Parliament, the streets leading to the houses of Parliament free and open, and that no obstruction shall be permitted to hinder the passage thereto of the lords or members.<sup>3</sup>

Obstructions in the streets, &c. Sessional orders, Appendix I.

When tumultuous assemblages of people have obstructed the thoroughfares, lobby or passages, orders have been given to the local authorities to disperse them.<sup>4</sup>

Tumultuous assemblages.

With the same object, it is enacted that not more than ten persons shall repair together to the houses of Parliament for the purpose of the presentation of a petition; and that not more than fifty persons shall meet together within the distance of one mile from the gate of Westminster Hall, save and except such parts of the parish of St. Paul's, Covent Garden, as are within the said distance, to consider or prepare a petition or other address to both houses, or either house of Parliament, on any day on which those houses shall meet and sit.<sup>5</sup>

Limitation on number of persons meeting or repairing to houses of Parliament in connection with petitions.

The hours and regulations of the meeting of both houses on ordinary occasions,<sup>6</sup> are dealt with on pp. 194 and 197. Saturday not being an

Sittings on Saturday.

<sup>1</sup> 75 C. J. 338; 82 ib. 376; 86 ib. 863. Leave of absence has also been enlarged, 126 ib. 266; 127 ib. 90.

<sup>2</sup> Standing order (H. C.), private business, No. 119. See debates on the absence of Lord Gardner from a private bill committee in the House of Lords, 81 H. D. 3 s. 1104. 1190.

<sup>3</sup> For the interpretation of this order, see 124 Parl. Deb. 4 s. 1494. Persons who have been guilty of misconduct in the galleries or elsewhere and have been

removed from the precincts, are under its provisions refused access to the house, 9 H. C. Deb. 5 s. 250.

<sup>4</sup> 31 L. J. 206. 209. 213; 32 ib. 147. 187; 36 ib. 142; 11 C. J. 667; 13 ib. 230; 17 ib. 661; 33 ib. 285; 37 ib. 901.

<sup>5</sup> 13 Car. II. stat. 1, c. 5; 57 Geo. III. c. 19, s. 23.

<sup>6</sup> The history of the House of Commons, more especially during recent years, contains examples of sittings rendered extraordinary by their excessive

S. O. 24,  
Appendix  
I.

ordinary day of meeting in the House of Commons, it was usual, until 1861, at an early hour on Friday, to resolve that the house, at its rising, do adjourn till Monday next, lest the Speaker should be obliged, by the want of members, to adjourn the house till Saturday: but, while the committees of supply and ways and means are open, the adjournment of the house until Monday is now effected by standing order No. 24, unless the house shall otherwise resolve.

Sittings on  
Sunday.

It need scarcely be stated that the meeting of either house on a Sunday is a rare occurrence. On the demise of the Crown (see p. 48), Parliament has occasionally been assembled on a Sunday. During the Commonwealth period the Commons met, on several occasions, on a Sunday,<sup>1</sup> as well as on Good Friday<sup>2</sup> and Christmas-day.<sup>3</sup> During the mania of the popish plot, also, both houses met occasionally on Sundays.<sup>4</sup> On the 18th May, 1794, the debate on the

length. On Tuesday, 31st July, 1877, the house, having met at a quarter before four, continued sitting until Wednesday afternoon at a quarter-past six—a period of twenty-six and a half hours, and until then the longest sitting. This sitting was held to overcome an obstructive opposition to the South Africa Bill. As there was no adjournment of the house on Tuesday, the twelve o'clock Wednesday sitting, under the standing orders, was superseded, and absorbed in the prolonged sitting of the previous day, 132 C. J. 399. On Monday, 31st Jan. 1881, the house, having met at a quarter before four, continued sitting until Wednesday morning at half-past nine—a continuous sitting of upwards of forty-one and a half hours, 136 C. J. 51. On Thursday, 21st May, 1896, the house having met at three continued to sit until half-past one upon Friday afternoon, 151 C. J. 244. On Tuesday the 19th July, 1904, the house having met at two continued to sit until five and twenty minutes before four on Wednesday afternoon, 159 C. J. 336. On Wednesday, 20th March, 1907, the house having met at a quarter before three o'clock continued to sit until twenty-four minutes before six o'clock on Thursday afternoon, a continuous sitting of twenty-six hours and fifty-one minutes, 162 C. J. 82. In the last two cases as the time for the next meeting under the standing orders had passed, the Speaker, at the conclusion of the sitting, declared that the

house stood adjourned until the following day, 159 C. J. 336, 138 Parl. Deb. 4 s. 676; 162 C. J. 82. Among the longest sittings previously on record were the following:—On the 14th Feb. 1764, on Wilkes' case, till half-past seven in the morning; the 17th Feb. 1783, on the address concerning the peace with France, Spain, and America, till nearly eight; on the 12th May, 1785, on commercial intercourse with Ireland, till after eight; on the 30th March, 1810, on the Scheldt expedition, till after seven; and on the 5th April, on the commitment of Sir Francis Burdett, till half-past seven; on the 12th July, 1831, on the Reform Bill till after seven; on the 13th May, 1878, until half-past nine; and on the 11th Aug. 1879, to a quarter-past seven.

<sup>1</sup> 8th Aug. 1641, to stay the king's journey into Scotland, 2 C. J. 245; 6th and 13th June, 1647 (chiefly for prayer), 5 ib. 200. 209; 1st Aug. 1647, for secular affairs, 5 ib. 263; 8th May, 1659, for prayers and a sermon, 7 ib. 646.

<sup>2</sup> 23rd April, 1641, 2 C. J. 126. In 1689, the House of Commons met on Easter Monday, as the Puritans and Latitudinarians objected to the usual adjournment, Macaulay, Hist. iii. 113; 10 C. J. 70.

<sup>3</sup> 25th Dec. 1656, Burton, i. 229-243; 7 C. J. 475; Palgrave's Oliver Cromwell, 192.

<sup>4</sup> 1st Dec. 1678, the House of Commons met to take the oaths of allegiance and



bill for securing suspected persons was not concluded until nearly three o'clock on Sunday morning.<sup>1</sup> The Reform Bill was read a second time by the Commons on Sunday morning, the 18th December, 1831.<sup>2</sup> The royal assent was signified to the Habeas Corpus Suspension (Ireland) Act at a quarter before one o'clock on Sunday morning, the 18th February, 1866 ;<sup>3</sup> and on some later occasions the house has continued its sitting until Sunday morning.<sup>4</sup>

Whenever a day of thanksgiving, or of fast and humiliation, is appointed during the sitting of Parliament, it is customary for both houses to attend divine service : the Lords at Westminster Abbey, and the Commons at St. Margaret's Church.<sup>5</sup> Each house appoints a preacher : the Lords appoint a bishop,<sup>6</sup> the Commons a dean, a doctor of divinity, or the Speaker's chaplain.<sup>7</sup> On the 31st January, 1699, the house resolved "that for the future no person be recommended to preach before this house, who is under the dignity of a dean in the Church, or hath not taken his degree of doctor of divinity."<sup>8</sup> On the 4th June, 1762, this resolution was repeated, making an exception, however, in favour of the chaplain of the house : but a bachelor of divinity has also been selected for this honour.<sup>9</sup> It is customary to thank the preacher and to desire him to print his sermon.<sup>10</sup>

Sunday, the 4th May, 1856, having been appointed a day of thanksgiving, in respect of the treaty of peace with Russia, the House of Lords met and proceeded to Westminster Abbey ; and the Speaker and the members of the House of Commons met at the house and thence proceeded to St. Margaret's Church, to attend divine service, the house having adjourned from Friday till the Monday following.<sup>11</sup> This precedent was followed when the Commons attended at St. Margaret's Church, on the 22nd May, 1887, and the 20th June, 1897, in celebration of the fiftieth and sixtieth years of Queen Victoria's reign.<sup>12</sup>

supremacy under the Act 30 Car. II., recently passed, 9 C. J. 551 ; and again 27th April and 11th May, 1679, 9 ib. 605. 619. On the latter day the Lords also met, 13 L. J. 506.

<sup>1</sup> 49 C. J. 613.

<sup>2</sup> 9 H. D. 3 s. 546.

<sup>3</sup> 121 C. J. 89.

<sup>4</sup> 134 C. J. 322 ; 135 ib. 273 ; 138 ib. 471.

<sup>5</sup> 88 L. J. 123 ; 40 C. J. 305 ; 57 ib. 483 ; 111 ib. 175, &c. On the 13th Feb. 1801, the Commons went to St. John the Evangelist's Church, St. Margaret's being

then under repair.

<sup>6</sup> 88 L. J. 120.

<sup>7</sup> 92 C. J. 279 ; 111 ib. 163. 177. On the 22nd May, 1887, the Bishop of Ripon was the preacher, 142 ib. 259, and on the 20th June, 1897, the Dean of Canterbury, 152 ib. 297.

<sup>8</sup> 13 C. J. 162.

<sup>9</sup> 24 C. J. 272 ; Rev. Henry Melvill, B.D., 13th March, 1855, 110 ib. 121.

<sup>10</sup> 88 L. J. 124 ; 98 C. J. 339 ; 142 ib. 262 ; 152 ib. 322.

<sup>11</sup> 88 L. J. 123, 111 C. J. 175.

<sup>12</sup> 142 C. J. 245. 259 ; 152 ib. 293. 297.

**Houses of Parliament go to St. Paul's.** On some occasions of special solemnity, the king and both houses of Parliament have attended divine service at St. Paul's Cathedral; as on the king's recovery from his illness in 1789, after the naval victories in 1797, on the conclusion of peace in 1814, in 1852 at the funeral of the Duke of Wellington and on the recovery of the Prince of Wales in 1872. On the latter occasion the house was represented in the royal procession by the Speaker.

**Queen Victoria's jubilee.** When both houses attended the service held in Westminster Abbey, on the 21st June, 1887, the Commons were, on the desire of Queen Victoria and pursuant to a resolution of the house, represented by the Speaker; and the presence of the members was regulated by a select committee.<sup>1</sup>

**Attendance at coronations.** If Parliament was sitting at the time of a coronation, it was customary for both houses to attend the ceremony in Westminster Abbey; and to make orders concerning such attendance.<sup>2</sup> This precedent was not followed at the coronation of King Edward and Queen Alexandra in 1902 or at the coronation of their Majesties in 1911. On these occasions the members of both houses attended by personal invitations. In 1911 the Commons were at his Majesty's desire and pursuant to a resolution of the house represented by the Speaker.<sup>3</sup>

**Royal marriages.** Both houses of Parliament adjourned on the occasion of the marriage of Queen Victoria on the 10th February, 1840, and of the Prince of Wales on the 10th March, 1863,<sup>4</sup> but on the occasions of other royal marriages there has not been an adjournment.<sup>5</sup>

**Funeral ceremonies of King Edward VII.** Both houses of Parliament attended the funeral ceremonies of King Edward VII. in Westminster Hall on the 17th May, 1910. Members assembled in their respective houses and proceeded thence to Westminster Hall and attended the service conducted by the Archbishop of Canterbury and the Dean of Westminster.<sup>6</sup>

**Adjournments as a mark of respect to deceased members.** Sometimes an adjournment is agreed to as a mark of respect to a deceased member. On the 15th September, 1646, both houses adjourned to mark their sense of the loss of the Earl of Essex.<sup>7</sup> On

<sup>1</sup> 38 L. J. 397, 44 C. J. 288; 53 ib. 140; 49 L. J. 1046, 69 C. J. 441; 108 ib. 29; 127 ib. 52. 61; 119 L. J. 253, 142 C. J. 293.

<sup>2</sup> William & Mary, 1689, 10 C. J. 82, &c.; Anne, 1702, 13 ib. 851; William IV., 1831, 86 ib. 793, &c.; Queen Victoria, 1838, 93 ib. 621, &c.

<sup>3</sup> 109 Parl. Deb. 4 s. 244; 166 C. J. 75.

<sup>4</sup> 72 L. J. 43, 95 C. J. 70; 95 L. J. 69, 118 C. J. 102.

<sup>5</sup> Marriages of the Dukes of Connaught, Albany, and York, 15th March, 1879, 27th April, 1882, 6th July, 1893. See also Mr. Gladstone's statement, 19th June, 1893, 13 Parl. Deb. 4 s. 1351.

<sup>6</sup> 142 L. J. 130, 165 C. J. 154.

<sup>7</sup> 4 C. J. 70.

the 3rd July, 1850, an adjournment was agreed to by the Commons, *nemine contradicente*, as a suitable mode of expressing the grief of the house on hearing of the death of its most distinguished member, Sir Robert Peel; <sup>1</sup> and on the 14th April, 1863, the like tribute was paid to the memory of Sir George Cornewall Lewis.<sup>2</sup>

On Monday, the 8th May, 1882, both houses adjourned, without transacting any but formal business, on account of the assassination of Lord Frederick Cavendish, chief secretary to the Lord-Lieutenant of Ireland, and Mr. Burke, under secretary, on the previous Saturday, in Phoenix Park, Dublin. On the 24th June, 1861, the Lords adjourned, *nemine dissentiente*, on the death of the lord chancellor, Lord Campbell, and on the 24th March, 1908, on the death of the Duke of Devonshire. The House of Commons adjourned on the 27th April, 1908, on account of the death of Sir Henry Campbell-Bannerman, and on the 6th July, 1914, on account of the death of Mr. Chamberlain.<sup>3</sup>

On Thursday, the 19th May, 1898, in consequence of the death of Mr. Gladstone, the House of Commons, after resolving that it would on the following day resolve itself into a committee to consider of an address to the Crown praying for the interment of his remains in Westminster Abbey, and the erection of a monument at the public expense, adjourned without transacting any other business.<sup>4</sup>

On Friday, the 31st May, 1878, the house adjourned, in the course of a debate, in consequence of the sudden death of one of its members, Mr. Wykeham-Martin, in the library of the house, where his body was then lying; and on Tuesday, the 9th July, 1907, a similar course was followed on the occasion of the death in the precincts of the house of Mr. Alfred Billson.<sup>5</sup>

Occasionally the house adjourns on the occasion of royal funerals. The funeral of the Duke of Sussex was appointed for the 4th May, 1843, and the house adjourned over that day. The Duke of Cambridge was buried on the 16th July, 1850, when the house sat from twelve till three, and then adjourned in consequence of the funeral. But

<sup>1</sup> 105 C. J. 484. The French Assembly, in their Procès Verbal, expressed regret at the loss of this eminent statesman, 163 H. D. 3 s. 772.

<sup>2</sup> Notwithstanding the universal regard for Sir George Lewis the propriety of this proceeding was questioned, in private, by eminent statesmen, as invidious dis-

tinctions might be drawn between the claims to such an honour.—Denison, 131.

<sup>3</sup> 114 L. J. 139, 137 C. J. 185; 93 L. J. 416; 140 L. J. 101; 163 C. J. 147; 169 ib. 319.

<sup>4</sup> 153 C. J. 213.

<sup>5</sup> 133 C. J. 264; 162 ib. 316.

on the funeral of the Princess Sophia, 5th June, 1848, the house did not adjourn; and again, the Duchess of Gloucester was buried on Friday, the 8th May, 1857 (the day after the lords commissioners' speech had been delivered), but the house sat on that day as usual; and not without due consideration. The funeral was at Windsor, at twelve; and the house did not meet until a quarter before four.<sup>1</sup>

Ascension-day,  
&c.

From 1849<sup>2</sup> until 1905, orders were made by the House of Commons, that no committees shall have leave to sit on Ascension-day until two o'clock, in order to give members an opportunity of attending divine service.<sup>3</sup> This motion was negatived in 1872. In 1873, however, it was carried by a large majority,<sup>4</sup> and was repeated in every succeeding year until 1905. Since that year the motion has not been made. On the 19th March, 1866, appointed by the Bishop of London as a day of prayer and humiliation, it was ordered that no committees do meet before one o'clock.

Other  
days.

In connection with the commemoration of the completion of the sixtieth year of Queen Victoria's reign in 1897, the house adjourned over the day of the Queen's procession through London.<sup>5</sup>

Office of  
Speaker.

The duties of the Lord Speaker of the upper house, and of the Speaker of the Commons, will appear in the various proceedings of both houses, as they are explained in different parts of this work: but a general view of the offices is necessary, in this place, for understanding the forms of parliamentary procedure.

Speaker of  
House of  
Lords.

The lord chancellor, or lord keeper of the great seal of England, is Prolocutor or Speaker of the House of Lords, by prescription;<sup>6</sup>

<sup>1</sup> The house having resolved to attend the funeral of the Duke of Wellington adjourned for that purpose, 108 C. J. 21. 29.

<sup>2</sup> So far back as 15th May, 1604, it "being put to question whether we should sit on Ascension day," upon division "resolved to sit." But on the 1st June, 1614, it was resolved, upon division, not to sit.

<sup>3</sup> 122 C. J. 255; 126 ib. 202; 146 ib. 264; 147 ib. 283; 159 ib. 179. This order was repeated on nine occasions between 1856 and 1871 inclusive. For the same purpose from 1853 till 1902, when the House of Commons met on Wednesdays at twelve o'clock, it was customary for the House to meet on Ash Wednesday at two o'clock, 109 ib. 106; 214 H. D. 3 s. 901; 8 Parl. Deb. 4 s. 1397.

<sup>4</sup> 128 C. J. 232.

<sup>5</sup> 152 C. J. 299. For adjournments over Queen Victoria's birthday when it was kept on a day other than Saturday, see 119 ib. 256; 120 ib. 298; 124 ib. 219. For many years it was customary to adjourn over the Derby day. This adjournment was generally moved by the leader of the house from 1856 until 1878, and on subsequent occasions the adjournment was moved by unofficial members (see p. 229, *n.* 1). The motion was negatived, Tuesday, 31st May, 1892, 147 C. J. 306; but the house was counted out on the following day. The motion was negatived in succeeding years, until 1896; since which year it has not been moved.

<sup>6</sup> Lord Ellesmere, Office of Lord Chancellor, ed. 1651.

and by standing order No. 5, it is declared to be his duty ordinarily to attend as Speaker: but if he be absent, or if there be none authorized under the great seal to supply that place in the House of Peers, the Lords may choose their own Speaker during that vacancy.<sup>1</sup> It is singular that the president of this deliberative body is not necessarily a member. It has even happened that the lord keeper has officiated for years as Speaker, without having been raised to the peerage.<sup>2</sup> On the 22nd November, 1830, Mr. Brougham sat on the woolsack as Speaker, being at that time lord chancellor, although his patent of creation as a peer had not yet been made out.<sup>3</sup>

When the great seal has been in commission, it was usual for the Lord Crown to appoint (if he were a peer) the chief justice of the Court of King's Bench or Common Pleas, the chief baron of the Exchequer, or the master of the Rolls, to be Lord Speaker.<sup>4</sup> In 1827, Sir John Leech, master of the Rolls, and Sir William Alexander, chief baron of the Court of Exchequer,<sup>5</sup> and in 1835, Sir L. Shadwell, vice-chancellor,<sup>6</sup> though not peers, were appointed Lord Speakers, while the great seal was in commission. On the meeting of Parliament in 1819, the lord chancellor being absent, the prince regent appointed Sir R. Richards, lord chief baron of the Exchequer, to supply his place, as Speaker.<sup>7</sup>

At all times there are deputy Speakers, appointed by commission to officiate as Speaker during the absence of the lord chancellor or lord keeper. When the lord chancellor and all the deputy Speakers are absent at the same time, the Lords elect a Speaker *pro tempore*:<sup>8</sup>

<sup>1</sup> See also observations as to the obligations of the lord chancellor to attend, 23rd Aug. 1831, and 20th June, 1834, 6 H. D. 3 s. 453; 7 ib. 646-662; 24 ib. 597. 600. 604.

<sup>2</sup> "When Sir Robert Henley was keeper of the great seal, and presided in the House of Lords as lord keeper, he could not enter into debate as a chancellor, being a peer, does, and therefore, when there was an appeal from his judgments in the Court of Chancery, and the law lords then in the house moved to reverse his judgments . . . the lord keeper could not state the grounds of his opinions given in judgment and support his decisions." Eldon, i. 319; Campbell, Lives, v. 188.

<sup>3</sup> 63 L. J. 114; so also Sir E. Sugden, 1852, 84 ib. 34; Sir F. Thesiger, 1858, 90 ib. 69; Sir Richard Bethell, 1861, 93 ib.

426; Sir William Page Wood, 1868, 101 ib. 3; Sir Hardinge Giffard, 1885, 117 ib. 301; Sir Farrer Herschell, 1886, 118 ib. 36; Sir Stanley Buckmaster, 1915, 147 ib. 163; Sir Robert Finlay, 12th December, 1916. The woolsack is not technically within the house.

<sup>4</sup> 66 L. J. 113; 70 ib. 42; 82 ib. 71; 84 ib. 126.

<sup>5</sup> 59 L. J. 278.

<sup>6</sup> 67 L. J. 291. On the 25th Oct. 1566, Sir R. Cattolyn, Chief Justice of the Queen's Bench, was appointed Lord Speaker, by commission, which appears to be the first instance of a commoner holding that office, 1 ib. 637.

<sup>7</sup> 52 L. J. 7. This was said to be in accordance with the precedent of Sir Robert Atkins, in the reign of King William III., Colchester, iii. 68.

<sup>8</sup> 80 L. J. 10; 105 ib. 38; 114 ib. 43, &c.

but he gives place immediately to any of the lords commissioners, on their arrival in the house ; who, in their turn, give place to each other according to their precedence, and all at last to the lord chancellor. In 1824, Lord Gifford, chief justice of the Common Pleas, was appointed sole deputy Speaker.<sup>1</sup> And on the 22nd April, 1831, when the king was approaching to prorogue Parliament, the lord chancellor suddenly left the woolsack to attend his Majesty, upon which Lord Shaftesbury was appointed Speaker *pro tempore*, and the debate, which had been interrupted for a time, proceeded until his Majesty entered the house.<sup>2</sup> For several years from 1851, there was only one deputy Speaker in the commission—the chairman of the Lords' committees : but on the 24th April, 1881, the lord chancellor acquainted the house of the appointment by the Crown of four peers to be deputy Speakers, in the absence of the lord chancellor and the chairman of committees.<sup>3</sup> For the purpose of hearing and determining appeals any Lord of Appeal in Ordinary may act as Speaker in the absence of the lord chancellor or lord keeper, or a former lord chancellor or lord keeper.<sup>4</sup> On the 6th July, 1865, the lord president of the council, being unanimously chosen Lord Speaker *pro tempore*, in the absence of the lord chancellor and of Lord Redesdale, the deputy Speaker, sat as Lord Speaker and, as one of the lords commissioners, delivered the royal speech and prorogued the Parliament.<sup>5</sup>

Duties of  
Speaker  
in the  
Lords.

The duties of the office are thus generally defined by standing order No. 20—

“The lord chancellor, when he speaks to the house, is always to speak uncovered, and is not to adjourn the house, or to do anything else as mouth of the house, without the consent of the Lords first had, except the ordinary thing about bills, which are of course, wherein the Lords may likewise overrule ; as, for preferring one bill before another, and such-like ; and in case of difference among the Lords, it is to be put to the question ; and if the lord chancellor will speak to anything particularly, he is to go to his own place as a peer.”<sup>6</sup>

His anomalous  
position.

The position of the Speaker of the House of Lords is somewhat anomalous ; for though he is the president of a deliberative assembly, he is invested with no more authority than any other member (see

<sup>1</sup> 56 L. J. 39, Colchester, iii. 311.

<sup>2</sup> 63 L. J. 511.

<sup>3</sup> 267 H. D. 3 s. 1204. For later cases of appointments of deputy Speakers, see 119 L. J. 28 ; 136 ib. 198.

<sup>4</sup> 132 L. J. 48.

<sup>5</sup> 97 L. J. 639.

<sup>6</sup> By virtue of his office he goes to the left of the chamber, above all dukes not being of the blood royal, 31 Hen. VIII. c. 10, s. 4.

pp. 278, 309). Upon points of order, if a peer, he may address the house; though, if not a member, his office is limited to the putting of questions and other formal proceedings.<sup>1</sup>

The duties of the Speaker of the House of Commons are as various as they are important. He presides over the deliberations of the house, and enforces the observance of all rules for preserving order in its proceedings; he puts every question and declares the determination of the house. As "mouth of the house," he communicates its resolutions to others, conveys its thanks and expresses its censure, its reprimands or its admonitions.<sup>2</sup> He issues warrants to execute the orders of the house for the commitment of offenders, for the issue of writs, for the attendance of witnesses in custody, for the bringing up prisoners in custody, and giving effect to other orders requiring the sanction of a legal form. He is, in fact, the representative of the house itself, in its powers, its proceedings and its dignity. When he enters or leaves the house, the mace is borne before him by the Serjeant-at-arms; when he is in the chair, it is laid upon the table; and at all other times, when the mace is not in the house, it remains with the Speaker and accompanies him upon all state occasions.

Duties of  
the  
Speaker of  
the  
House of  
Commons.

The Speaker is responsible for the due enforcement of the rules, rights, and privileges of the house, and when he rises he is to be heard in silence (p. 310). In accordance with his duty, he declines to submit motions to the house, which obviously infringe the rules which govern its proceedings; such as a motion which would create a charge upon the people and is not recommended by the Crown (p. 457); a motion touching the rights of the Crown, which has not received the royal consent (p. 542); a motion which anticipates a

<sup>1</sup> See Debate in the Lords, 22nd June, 1869, in which it was suggested that the chancellor should be invested with more extended powers: but it was pointed out, on the other side, by some peers and by the chancellor himself, that as he was a minister of the Crown, not chosen by the house itself, and was often a member of the least experience in the house, he could not properly exercise the same powers as those of the Speaker of the Commons, 197 H. D. 3 s. 400. See also 136 Parl. Deb. 4 s. 1394; 137 ib. 121; 191 ib. 1233.

<sup>2</sup> When the words uttered by Mr. Speaker from the chair are called forth by the proceeding then before the house, his words are entered, either with or without the order of the house, in the votes

and upon the journal. An address delivered from the chair on the 31st July, 1893, made on the request of the prime minister at the close of a personal explanation relating to the disorder which had arisen in committee on a previous day, was entered in the journal, on the motion of the prime minister on the 1st August, 148 C. J. 477. Mr. Speaker's words addressed to the House on the 14th November, 1912, with reference to the circumstances under which he had adjourned the house on the previous day owing to the prevalence of grave disorder, were entered in the votes and journal without an order of the house, 167 C. J. 409.

matter which stands for the future consideration of the house, which raises afresh a matter already decided during the current session, or is otherwise out of order (p. 247), and decides whether a motion, brought forward as a matter of privilege, comes within that category (p. 241). If a proposed instruction to a committee be out of order, the Speaker explains the nature of the irregularity (p. 365).

If the Speaker is made aware that a member proposes to bring forward a motion, or to engage in a proceeding which would infringe the rules and usages of the house, he deals with the matter, if it seems desirable, by conveying to the member an intimation regarding the irregularity of the course which the member proposes to follow.

The Speaker has ruled a private bill out of order on the ground that it should have been introduced as a public bill (p. 595 *et seq.*), and has directed the withdrawal of a public bill which should have been introduced on the report of a committee of the whole house (see p. 457), or which has gone beyond its title (see p. 351). Similarly he has directed the recommittal of a bill to a standing committee when clauses affecting public money have been introduced without the necessary authority (see p. 458).

Amendments by the Lords to a bill which trench upon the privileges of the House of Commons are submitted to the Speaker; and, if occasion requires, he calls the attention of the house to the nature of the amendments, and gives his opinion thereon (p. 509).

Appeal may be made to the Speaker regarding the practice or privileges of the house (p. 310), though such inquiry may not be addressed to him in the form of a question printed upon the notice paper (p. 221); nor can the opinion of the Speaker be sought regarding an occurrence in a committee, although a committee, to obtain the advice of the Speaker, has reported progress for that purpose under the exceptional circumstances stated on p. 409, n. 3.

Reflections made in debate, or outside the house, on the conduct of the Speaker, or letters addressed to him criticizing the course he had taken in the proceedings of the house, may be punished by suspension or otherwise;<sup>1</sup> and if the necessity should arise, the Speaker informs the house that such letters have been addressed to him (see p. 81). According to the rule stated on p. 248, the decision of the house regarding the conduct of the Speaker cannot be obtained upon an amendment, but must be sought for by a substantive motion.

<sup>1</sup> 313 H. D. 3 s. 371; 329 ib. 48; 356 ib. 410-434.



The Speaker, whenever it seems to him the suitable occasion,<sup>1</sup> communicates to the house letters and documents addressed to him as Speaker, such as expressions of congratulation and condolence and other messages from foreign countries and legislatures,<sup>2</sup> letters acknowledging a vote of the thanks of the house,<sup>3</sup> or relating to the rights and privileges of the house or of its members, such as communications announcing the arrest or imprisonment of a member (p. 118). When the Speaker has communicated a document to the house, it is entered on the votes and proceedings of the house and on the journal, without motion made, or question put; <sup>4</sup> though a motion of a breach of privilege has been raised on the form of the document (p. 243). The Speaker is not obliged to read to the house *S. O. 94,* every letter or communication that may be addressed to him as *Appendix* Speaker, but he may at his discretion withhold the same from *I.* publication.<sup>5</sup>

To forward the transaction of the business of the house, the Speaker represses irrelevance or repetition in debate (p. 280), deals summarily with dilatory motions (p. 282), and with a claim for a division (p. 335), which, in his opinion, is made in abuse of the rules of the house, or is unduly demanded. When the occasion arises, he directs that words uttered in debate be taken down for consideration by the house, if, in his opinion, the words are disorderly (pp. 300, 308).

The Speaker represses disorder in the house,<sup>6</sup> by enforcing the withdrawal below the bar of a member who disobeys the order of the house (pp. 154, 155); by calling members to order (p. 307), when the offence is committed in his presence; by putting in force standing order No. 18 (the suspension of members) (p. 302); by naming a member, under the ancient usage of the house (p. 303); and by directing him to withdraw from the precincts, under standing

<sup>1</sup> 329 H. D. 3 s. 495.

<sup>2</sup> 99 C. J. 3.

<sup>3</sup> 143 C. J. 142; 148 ib. 628; 152 ib. 301; 153 ib. 216. 224. 230. 275; 156 ib. 5. 6. 7. 16. 48; 157 ib. 321; 160 ib. 301; 162 ib. 87; 163 ib. 67; 165 ib. 150. 152. 157. 167. 215. 242; 166 ib. 433; 167 ib. 113. 115. 138. 543. 548; 170 ib. 273; 171 ib. 70. 104. On the occasion of communicating a message from the President of the Duma of the Russian Empire, the Speaker informed the House of the answer which he had sent, 169 ib. 442.

<sup>4</sup> 263 H. D. 3 s. 45-49; 274 ib. 1328.

A motion, once made, that a letter communicated by the Speaker be laid upon the table (138 C. J. 4) cannot be reckoned as a precedent.

<sup>5</sup> 2 Cav. Deb. 436; 261 H. D. 3 s. 1785. In the latter case the Speaker said that it was for the house to say whether the correspondence should be produced.

<sup>6</sup> His jurisdiction does not extend to words outside the house. *Times newspaper*, 17th March, 1893; see also p. 309.

order No. 20 (p. 308). The committal of a member to the custody of the Serjeant is effected by an order of the house; yet, for the maintenance of order, the Speaker has, upon information that a man had assaulted a member in the lobby, directed the Serjeant to take the offender into custody.<sup>1</sup> The Speaker's powers in the event of grave disorder arising in the house are described on p. 204.

The Speaker has overruled opposition to formal questions (see p. 199) essential to the completion of the transaction of business, which were unavoidably put from the chair during the time set apart for unopposed business, or after the moment fixed for the interruption of business. The Speaker also may decline to count the house (see p. 207). If the occasion arises, he expresses his opinion regarding cases of personal interest in a vote (see p. 338).

The duties laid upon the Speaker respecting the issue of writs to fill up vacancies in the house are dealt with later (see p. 574).

Various duties are laid upon the Speaker by statute, for instance by the Lunacy (Vacating of Seats) Act, 1886 (see p. 28), and by the Parliament Act, 1911 (see p. 396). It may also be his duty to transmit to the officials of the Bank of England a certificate in writing, notifying that the house had agreed to a resolution for the redemption of stock forming part of the National Debt.<sup>2</sup>

**His rank.** In rank, the Speaker takes precedence of all commoners, both by ancient custom and by legislative declaration. The Act 1 Will. & Mary, c. 21, enacts that the lords commissioners for the great seal "not being peers, shall have and take place next after the peers of this realm, and the Speaker of the House of Commons."<sup>3</sup>

**Duration of office after dissolution.** By the House of Commons (Speaker) Act, 1832 (2 & 3 Will. IV. c. 105), and by the House of Commons Offices Act, 1846 (9 & 10 Vict. c. 77), it is provided that, in case of a dissolution, the then Speaker shall be deemed to be the Speaker, for the purposes of those Acts, until a Speaker shall be chosen by the new Parliament.

**When absent.** Formerly, no provision was made for supplying the place of the Speaker by a deputy Speaker or Speaker *pro tempore*, as in the upper house.<sup>4</sup> When he was unavoidably absent, no business could be done,

<sup>1</sup> 79 C. J. 483.

<sup>2</sup> 328 H. D. 3 s. 525; 143 C. J. 345; National Debt Act, 1870, first schedule.

<sup>3</sup> See also 2 Hatsell, 240, n.; and regarding the precedence between the Speaker and a peer of Ireland, whilst a

member of the House of Commons, see Colchester, i. 413.

<sup>4</sup> During the Protectorate, Speakers *pro tempore* were appointed, 7 C. J. 482. 483. 612. 811.

but the Clerk acquainted the house with the cause of his absence, and put the question for adjournment<sup>1</sup> by direction of the house, or, if the house could not be made, declared at four o'clock by direction of the house that the house stood adjourned.<sup>2</sup> When the Speaker was unable to attend for a considerable time on account of illness, it was necessary to elect another Speaker, with the usual formalities of the permission of the Crown and the royal approbation. On the recovery of the Speaker, the latter would resign, or "fall sick," and the former was re-elected, with a repetition of the same ceremonies.<sup>3</sup>

In 1855, on the report of a select committee, a standing order was agreed to,<sup>4</sup> which enables the chairman of ways and means, as deputy Speaker, to take the chair during the unavoidable absence of the Speaker,<sup>5</sup> and perform his duties. The provisions of this standing order received statutory authority by the Deputy Speaker Act, 1855 (18 & 19 Vict. c. 84). The standing order has since been amended by a provision for the appointment of a deputy chairman,<sup>6</sup> who, whenever the chairman of ways and means is absent from the chair, is entitled to exercise all his powers, including those as deputy Speaker.<sup>7</sup>

Deputy Speaker in the Commons. S. O. 81, Appendix 1.

<sup>1</sup> 1 C. J. 353; 25 ib. 532; 39 ib. 841; 44 ib. 45; 45 ib. 316; 83 ib. 547. A similar course had to be followed on the 7th May, 1910, when the house met in consequence of the death of King Edward VII., and the Speaker, chairman of ways and means and deputy chairman were unavoidably absent, 165 C. J. 147.

<sup>2</sup> 66 C. J. 82.

<sup>3</sup> 9 C. J. 463, 476; 11 ib. 271, 272.

<sup>4</sup> The sanction of the consent of the Crown was given to the appointment of the committee and to the standing order, and to its amendment, 108 C. J. 758, 766; 110 ib. 395; 157 ib. 65; Report on the office of Speaker, Parl. Pap. (H. C.) sess. 1852-3, No. 478.

<sup>5</sup> The Speaker, 20th June, 1870, asked the indulgence of the house to enable him to receive the degree of D.C.L. at Oxford, when the chairman of ways and means was ordered to take the chair, as deputy Speaker, during his absence; and again in 1887, 125 C. J. 265; 142 ib. 306. On the 5th July, 1893, the Speaker asked the indulgence of the house to be absent on the occasion of the royal wedding on the following day, when, the house being met, the Clerk announced the cause of the Speaker's unavoidable absence, and the chairman of ways and means took the

chair after prayers as deputy Speaker, 148 C. J. 414, 14 Parl. Deb. 4 s. 950. On the 20th June, 1904, the Speaker asked the house to dispense with his attendance on the 22nd June, to enable him to receive the degree of D.C.L. at Oxford, and to permit the chairman of ways and means to take the chair as deputy Speaker on that day. The house signified its assent, and the Speaker's absence on the 22nd June was announced in the ordinary way, 159 C. J. 247, 253. See also 162 ib. 275, 282; 165 ib. 168, 169.

<sup>6</sup> 157 C. J. 59; 164 ib. 337.

<sup>7</sup> When the Speaker is absent, the Serjeant, accompanied by the chaplain, enters the house with the mace, which he places upon the table. The Clerk informs the house of the Speaker's unavoidable absence, and if necessary of that of the chairman of ways and means. The chairman of ways and means, or in his absence the deputy chairman, then proceeds to the table, and, after prayers, counts the house if necessary, and takes the chair. If the house goes into committee and he takes the chair thereof, when the question for reporting progress has been agreed to, he returns to the chair of the house, and a member makes to him the report of the committee, 158 C. J. 96, 107.

Resumption of the chair by Mr. Speaker during the same sitting.

On the 31st January, 1881, during a protracted sitting, the Speaker retired and the Clerk informed the house of his unavoidable absence.

The chairman of ways and means then took the chair, which, after several hours, was resumed by the Speaker. Objection was immediately taken that the Speaker, having once left the chair, was, according to the terms of the standing order, unable to resume it until the following day: but the objection was overruled by the Speaker, because the standing order could not restrain the inherent authority of the Speaker in the event of his resuming the chair and exercising the authority of his office. When the debate had further continued for many hours, the Speaker was again replaced by the chairman of ways and means, but resumed the chair in the morning, and occupied it until the close of the debate.<sup>1</sup>

Temporary absence from the chair of Mr. Speaker.

Standing order No. 1 now empowers the Speaker, after he has taken the chair at the commencement of a sitting, without any formal communication to the house, to request the chairman of ways and means or the deputy chairman to take the chair, either temporarily or until the adjournment of the house.<sup>2</sup>

A brief notice may now be given of the principal officers whose duties are immediately connected with the proceedings of Parliament.

Assistants of the Lords.

The assistants of the House of Lords are the judges, the attorney-general and solicitor-general, and such of the privy council as are called by writ from the Crown to attend.<sup>3</sup> The judges, as assistants

In session 1903, on a day on which there were two sittings (see p. 198, n. 1), the Speaker who had taken the chair at the commencement of the afternoon sitting was unable to resume it when progress was reported from the committee of supply at the evening sitting. The house was so informed by the Clerk, and the deputy chairman who had been acting for the chairman of ways and means in his unavoidable absence took the chair as deputy Speaker, 158 C. J. 96. For other instances of the announcement in the course of a sitting of the Speaker's unavoidable absence from the remainder of the sitting, see 160 ib. 65; 166 ib. 107; 167 ib. 527; 168 ib. 48; 169 ib. 105.

<sup>1</sup> 136 C. J. 50, 257 H. D. 3 s. 1707. On other occasions the Speaker vacated and resumed the chair during a sitting, 121 C. J. 234. 261. 331. 339.

<sup>2</sup> 144 C. J. 393. 394; 145 ib. 539. 580;

165 ib. 231. When the Speaker has found that he would be unable to be present at the meeting of the house, he has requested the Chairman of Ways and Means to take the chair as deputy Speaker, under standing order No. 1, and has taken the chair himself in the course of the sitting, 164 C. J. 407. 474; 169 ib. 194. 382.

<sup>3</sup> Standing orders (H. L.) Nos. 6 and 7. Formerly judges of the Courts of King's Bench and Common Pleas, barons of the Exchequer, the master of the Rolls, the attorney-general, solicitor-general, and the king's serjeants were summoned, at the beginning of every Parliament, to be "present in Parliament, with us and with others of our council to treat and give advice" (Macqueen, 35). Since the Judicature Act, 1873, all the judges of the High Court of Justice and of the Court of Appeal have been summoned, Parl. Pap. (H. C.) sess. 1901, No. 212, p. vii.

of the Lords, held a more important place in Parliament in ancient times than that which is now assigned to them, having had a voice of suffrage as well as a voice of advice.<sup>1</sup> They were also occasionally made joint committees with the lords of Parliament—a practice which continued until the latter end of the reign of Queen Elizabeth.<sup>2</sup> Their attendance was formerly enforced on all occasions, but they are now summoned by a special order, when their advice is required.<sup>3</sup>

The chief officers of the upper house are the Clerk of the Parliaments, the gentleman usher of the Black Rod, the clerk assistant, the reading clerk and the Serjeant-at-arms.<sup>4</sup> The Clerk of the Parliaments is appointed by the Crown, by letters patent. On entering office, he makes a declaration, under the Promissory Oaths Act, 1868, at the table, before the lord chancellor, to make true entries and records of the things done and passed in the "Parliaments, and to keep secret all such matters as shall be treated" therein, "and not disclose the same before they shall be published, but to such as it ought to be disclosed unto."<sup>5</sup> The clerk assistant and the reading-clerk are appointed by the lord chancellor,<sup>6</sup> the appointments being subject to the approbation of the house, and, when appointed, they cannot, under standing order No. 55, be suspended or removed without an order of the house. They attend at the table, with the Clerk, and take minutes of the proceedings, orders and judgments of the house. These have been published daily since 1824, as the "Minutes of the Lords' Proceedings," and they are printed, in a corrected and enlarged form, as the Lords' Journals, after being examined "by the sub-committee on the journals."<sup>7</sup>

Chief  
officers of  
the Lords.

minutes  
and

journals.

<sup>1</sup> Hale, *Jurisd. Lords*, 59; Sugden, 14; see also Lord Lyndhurst's speech, 117 H. D. 3 s. 1069.

<sup>2</sup> 1 L. J. 586. 606, 26th Jan., 20th March, 1563; West, *Inq.* 48; D'Ewes, 99, 143. See *ib.* 142 for case of Attorney-General and Solicitor-General being made a joint committee with the lords.

<sup>3</sup> Their place is on the woolsacks. The last attendance of the judges was during the session of 1897, 129 L. J. 100, 105, &c. If the Scotch judges are called upon to deliver their opinions, the house orders chairs to be placed for the judges below the bar, 25 *ib.* 99; 46 *ib.* 172, 189.

<sup>4</sup> The masters in ordinary in chancery, until the abolition of their offices, attended the House of Lords, and carried bills and messages to the House of Commons.

<sup>5</sup> 87 L. J. 44. For the earliest grant by letters patent, 2 Henry VI., see *Parl. Pap.* (H. C.) sess. 1856, No. 96.

<sup>6</sup> 5 Geo. IV. c. 82, s. 3. Regarding these appointments, the select committee on the office of the Clerk of the Parliaments made the following report: "The committee strongly recommend that the appointment to at least one of these clerkships should revert to the Clerk of the Parliaments; and that he should promote one of the senior clerks of his department, whom he shall consider most fit for the post," *Parl. Pap.* (H. L.) sess. 1889, No. 217, para. 17. Report considered and agreed to, 121 L. J. 403.

<sup>7</sup> 56 L. J. 369; 84 *ib.* 91; S. O. (H. L.), No. 56.

**Black  
Rod.**

The gentleman usher of the Black Rod is appointed by letters patent from the Crown, and he, or his deputy, the yeoman usher, is sent to desire the attendance of the Commons in the House of Peers, at the opening and proroguing of Parliament, when the royal assent is given to bills by the king or the lords commissioners, and on other occasions. He executes orders for the commitment of parties guilty of breaches of privilege and contempt, and assists at the introduction of peers and other ceremonies.

**Serjeant-  
at-arms.**

The Serjeant-at-arms is also appointed by the Crown. He attends the lord chancellor with the mace and executes the orders of the house for the attachment of delinquents, when they are in the country. He is, however, the officer of the lord chancellor, rather than of the house.

**Shorthand  
writer.  
Lords.**

The shorthand writer to the houses of Parliament is appointed by the Clerk of the Parliaments and by the Clerk of the House of Commons, pursuant to a resolution<sup>1</sup> agreed to by both houses during the session of 1813. He attends at the bar of the House of Lords when persons are summoned to attend the house, when evidence is tendered on the second reading of divorce bills, and on peerage cases. He also records the opinions given by the lords of appeal, when the house sits as a judicial court. The shorthand writer attends at the bar of the House of Commons when members or other persons are summoned to attend the house, and whenever the Speaker, by order, gives utterance to the opinion of the house; and it is the duty of the shorthand writer on these occasions to record the words uttered by the Speaker and by the persons who have been summoned to attend the house.

**Chief  
officers of  
the Com-  
mons.  
Clerk of  
the house.**

The chief officers of the House of Commons are the Clerk of the house, the Serjeant-at-arms, the clerk assistant and second clerk assistant. The Clerk of the house is appointed by the Crown, for life, by letters patent, in which he is styled "Under Clerk of the Parliaments, to attend upon the Commons."<sup>2</sup> He makes a declaration, under the Promissory Oaths Act, 1868, before the lord chancellor, on

<sup>1</sup> 49 L. J. 449. 482; 68 C. J. 497; Report of Select Committee on House of Commons' officers, &c., Parl. Pap. (H. C.), sess. 1833, No. 648, Q. 973. See also 48 Parl. Deb. 4 s. 923, and Second Report of Select Committee on Publications and Debates Reports, Parl. Pap. (H. C.) sess. 1914-16, No. 398.

<sup>2</sup> 2 Hatsell, 255; *London Gazette*, 1st

Oct. 1850, 3rd Feb. 1871, 4th May, 1886, 13th Feb. 1900, 18th Feb. 1902; see also 3 C. J. 54. 57. For earliest grant of appointment by letters patent, 1 Edw. IV., see Parl. Pap. (H. C.), sess. 1856, No. 96. First appointment of the clerk assistant, 2 C. J. 12; of the second clerk assistant, 58 ib. 7.

entering upon his office, "to make true entries, remembrances, and journals of the things done and passed in the House of Commons." He signs the addresses, votes of thanks, orders of the house, endorses the bills sent or returned to the Lords, and reads whatever is required to be read in the house. He is addressed by members, and puts such questions as are necessary on an election of a Speaker (see p. 145), and for the adjournment of the house, when it is necessitated by the death or retirement of the Speaker (see p. 147), or by the absence of the Speaker and deputy Speakers (see p. 181). He has the custody of all records or other documents,<sup>1</sup> and is responsible for the conduct of the business of the house in the official departments under his control. He also assists the Speaker and advises members, in regard to questions of order and the proceedings of the house. The clerks assistant are appointed by the Crown, under the sign manual, on the recommendation of the Speaker, and are removable only upon an address of the House of Commons.<sup>2</sup> They sit at the table of the house, on the left hand of the Clerk.

A record of the proceedings of the house, entitled "The Votes and Proceedings," made by the clerks at the table, is printed and distributed every day (see p. 208).<sup>3</sup> From these the journal is afterwards prepared, in which the entries are made at greater length, and with the forms more distinctly pointed out. These records are confined to the votes and proceedings of the house, without any reference to the debates. The earlier volumes of the journals contain short notes of speeches, which the Clerk had made without the authority of the house: but all the later volumes record nothing but the *res gestæ*. It was formerly the practice for a committee "to survey the Clerk's book every Saturday," and to be entrusted with a certain discretion in revising the entries: <sup>4</sup> but now the "votes" are prepared on the responsibility of the Clerk; and after "being first perused by Mr. Speaker," <sup>5</sup> are printed for the use of members and for general circulation. But no person may print them, who is not authorized by the Speaker.

Votes and  
proceed-  
ings, and  
journals of  
House of  
Commons.

<sup>1</sup> 1 C. J. 306; 6 ib. 542; 17 ib. 724, &c.

<sup>2</sup> 19 & 20 Vict. c. 1; Treasury Minute, 1856, Parl. Pap. (H. C.) sess. 1856, No. 132.

<sup>3</sup> They had been printed, with some interruptions, since 1680. A delay of several days took place in the printing and circulation of the "Votes and Proceed-

ings," until 1817, when their publication on the morning after the sitting to which they relate, was established by Mr. John Rickman, clerk assistant.—*Gentleman's Magazine* (1841), p. 432.

<sup>4</sup> 1 C. J. 673. 676. 683. 885; 2 ib. 12. 42. For a history of the early journals, see 24 ib. 262.

<sup>5</sup> Sessional order since 1680, 9 C. J. 643.

Journals  
of both  
houses as  
records.

The Journals of the House of Lords have always been held to be public records.<sup>1</sup> They were formerly "recorded every day on rolls of parchment," and in 1621 it was ordered that the Journals of the House of Commons "shall be reviewed and recorded on rolls of parchment." This practice has long since been discontinued by the Lords and does not appear to have been adopted by the Commons.<sup>2</sup> Persons have access to the printed Journals of the House of Commons in the same manner as to the journals of the other house. The Journals of the House of Commons,<sup>3</sup> however, are not regarded as records, although their claim to that character has been upheld by weighty arguments.<sup>4</sup>

Authenti-  
cation of  
extracts  
from  
journals.

When the Journals of the House of Lords are required as evidence, a party may have a copy or extract, authenticated by the signature of the Clerk of the Parliaments, and, if necessary, the Lords have allowed an officer of their house to attend a trial with the original journal. In the Commons, it is usual for an officer of the house to attend with the printed journal, when a cause is tried in London: but when it is tried at the assizes, or at a distance, a party may either obtain from the Journal Office a copy of the entries required, without the signature of any officer, and swear himself that it is a true copy; or, with the permission of the house, or, during the recess, of the Speaker, he may secure the attendance of an officer to produce the printed journal, or extracts which he certifies to be true copies.<sup>5</sup> By the Evidence Act, 1845 (8 & 9 Vict. c. 113), s. 3 (which does not extend to Scotland), it is enacted that all copies of the journals of either house of Parliament, purporting to be printed by the printers to the Crown<sup>6</sup> or by the printers to either house of Parliament, shall be admitted as evidence thereof by all courts, justices, and others, without proof being given that such copies were so printed.<sup>7</sup>

<sup>1</sup> Before the commencement of the Lords' Journals, in 1509, the proceedings of Parliament were recorded in the Rolls of Parliament, A.D. 1278-1503, 6 Edward I. to 19 Henry VII.

<sup>2</sup> 2 Oxford Deb. 22; 1 C. J. 608; 3 Hatsell, 37.

<sup>3</sup> The Journals of the Commons begin in 1547, 1 Edward VI.; and, with the exception of a short period during the reign of Elizabeth, are complete to the present time.

<sup>4</sup> 4 Co. Inst. 23.

<sup>5</sup> For cases where the production of the original MS. journal was required, see 99

C. J. 128; 100 ib. 114; Lord Melville's case (1806), 29 State Tr. 683; R. v. Lord George Gordon (1780), 2 Doug. (K. B.) 593, 29 State Tr. 685.

<sup>6</sup> For the substitution of printing under the superintendence and authority of His Majesty's Stationery Office for printing by the printer to the Crown, see Documentary Evidence Act, 1882, section 2.

<sup>7</sup> In *Chubb v. Salomons* (1852), 3 Car. and Kir. 75, a printed copy of the Journal of the House of Commons was produced, and a witness proved that he had "examined the printed book with the manuscript from which it was printed," or



Entries in the journal have occasionally been ordered to be expunged.<sup>1</sup> When the resolution of the 17th February, 1769, affirming the incapacity of Wilkes, was ordered to be expunged, on the 3rd May, 1782, "the same was expunged by the Clerk at the table accordingly;"<sup>2</sup> and the entry was erased in the manuscript journal of that day: but the printed journal, though reprinted since that time, still contains the resolution.

Entries in the journal, and the Clerk's minute-book expunged.

On the 16th May, 1833, a motion was made by Mr. Cobbett, impugning the conduct of Sir Robert Peel. Lord Althorp moved "That the resolution which has been moved be not entered in the minutes:" but the Speaker put the question thus, "That the proceedings be expunged," on the ground that the minutes had already been entered in the Clerk's book. The question thus put was carried by 295 to 4, and no entry of the motion or other proceedings was made in the "votes."<sup>3</sup>

On the 6th March, 1855, a motion was made relative to the appointment of a recorder for Brighton; and on proceeding to a division the mover was left alone, the member who had seconded his motion *pro forma*, declining to vote with him. A member immediately rose and moved that the motion should not be entered in the votes, which was agreed to by all the members except the mover of the original motion. Accordingly, there is no entry of either motion in the votes.<sup>4</sup>

The house, on the 27th January, 1891, resolved that the resolution of the 22nd June, 1880,<sup>5</sup> which debarred Mr. Bradlaugh from taking the oath or affirmation, be expunged from the journals; and accordingly the Clerk passed a red line through that resolution, in the volumes preserved in the library and Journal Office of the house, and noted on the margin of the page that the paragraph was expunged pursuant to the resolution of the house.<sup>6</sup> The Clerk also addressed letters to the librarians of the British Museum, the Universities of Oxford, Cambridge and Dublin, and the Advocate's Library at Edinburgh, requesting them to note the proceeding on the copies of the journal in their libraries.

On the 16th July, 1909, the house ordered that the entry of a rather "the proof-sheets with the manuscript and not the last printed copy." The court, whose attention was presumably not drawn to the Statute, rejected the printed Journal as evidence, but an examined extract of the minute book, kept by the clerk at the table, was afterwards given in evidence.

<sup>1</sup> 4 C. J. 397, &c.; 5 ib. 197; 7 ib. 317; 11 ib. 210; 33 ib. 509.

<sup>2</sup> 38 C. J. 977.

<sup>3</sup> 2 Peel's Speeches, 704; 17 H. D. 3 s. 1324.

<sup>4</sup> 137 H. D. 3 s. 202.

<sup>5</sup> 135 C. J. 234.

<sup>6</sup> 146 C. J. 45.

previous day that the Chairman had called the attention of a committee of the whole house to the disorderly conduct of a member, and had directed him to withdraw from the house for the remainder of the sitting, and that the member in question withdrew accordingly, should be expunged. The entry ordered to be expunged was printed in the Journal in erased type.<sup>1</sup>

This notice with regard to the journals has necessarily interrupted the account of the chief officers of the House of Commons, to which it is now time to return.

Serjeant-at-arms.

The appointment of the Serjeant-at-arms is in the gift of the king, under a warrant from the lord chamberlain, and by patent under the great seal, "to attend upon his Majesty's person when there is no Parliament; and, at the time of every Parliament, to attend upon the Speaker of the House of Commons:" but after his appointment he is the servant of the house and may be removed for misconduct. On the 2nd June, 1675, the house committed Sir James Norfolke to the Tower, for "betraying his trust," and addressed the Crown to appoint another Serjeant-at-arms "in his stead."<sup>2</sup> His duties are to attend the Speaker, with the mace, on entering and leaving the house, or going to the House of Lords, or attending his Majesty with addresses. It is his duty to keep the gangway at and below the bar clear, and to desire the members to take their places, and not to stand with their backs to the chair, nor to stand, nor remove from their places, with their hats on, when the house is sitting.<sup>3</sup> He takes strangers into custody who are irregularly admitted into the house, or who misconduct themselves there; causes the removal of persons directed to withdraw; gives orders, to the door-keepers and other officers under him, in connection with divisions; introduces, with the mace, peers or judges attending within the bar, and messengers from the Lords; attends the sheriffs of London and the lord mayor of Dublin at the bar, on presenting petitions; brings to the bar prisoners to be reprimanded by the Speaker, or persons in custody to be examined as witnesses. For the better execution of these duties, he has a chair close to the bar of the house, and is assisted by a deputy Serjeant and an assistant Serjeant. Out of the house, he is entrusted with the execution of all warrants for the commitment of persons ordered into custody by the house, and for removing them to the Tower or

<sup>1</sup> 164 C. J. 304. 311.

<sup>2</sup> See Mr. Disraeli's statement, 1st March, 1875, 222 H. D. 3 s. 998; officers and usages of the house. MS. 1805; 9 C. J.

351.

<sup>3</sup> MS. account of the office and duty of the Serjeant-at-arms attending the House of Commons.

a prison, or retaining them in his own custody. He serves, by his messengers, all orders of the house, upon those whom they concern. He also maintains order in the lobby and passages of the house,<sup>1</sup> and has control of the arrangements for the admission of strangers.

It is another of the Serjeant's duties to give notice to all committees, when the house is going to prayers. He has the appointment and supervision of the several officers in his department; and, as house-keeper of the house, has charge of all its committee-rooms and other buildings, during the sitting of Parliament.

By the ancient custom of Parliament,<sup>2</sup> and by orders of both houses, strangers are supposed not to be admitted while the houses are sitting. The Lords' standing order No. 8 is as follows: Admission  
of  
strangers.  
Lords.

No person shall be in any part of the house during the sitting of the house, except lords of Parliament and peers of the United Kingdom, not being members of the House of Commons, and heirs apparent of such peers or of peeresses of the United Kingdom in their own right, and such other persons as attend this house as assistants.<sup>3</sup>

Strangers, however, are regularly admitted below the bar, and in the galleries: but the standing order may at any time be enforced.<sup>4</sup>

Until 1845, the Commons, by a sessional order, maintained the exclusion of strangers from every part of the house: but since that time that order has not been made, and the presence of strangers has been recognized in those parts of the house not appropriated to the use of members.<sup>5</sup> On the 3rd May, 1836, the house, in pursuance of the report of a select committee, ordered that arrangements should be made for the accommodation of ladies during the debates.<sup>6</sup> In session 1906, arrangements were made and approved by the house for the accommodation of private secretaries of ministers and officials from the public departments in the gallery on the right behind Mr. Speaker's chair.<sup>7</sup> Commons.

<sup>1</sup> 9 H. D. 1 s. 1; 137 Parl. Deb. 4 s. 982.

<sup>2</sup> 1 C. J. 105. 118. 417. 484; 2 ib. 74. 433, &c.

<sup>3</sup> As to the admission of peers' eldest sons to hear debates in the reign of Henry VIII., see State Papers, iii. 395.

<sup>4</sup> Strangers were not admitted to the House of Lords on the 25th April, 1916, and the Lords resolved that the sitting of that day should be secret, 148 L. J. 90, 21 H. L. Deb. 5 s. 811. See also p. 191, n. G.

<sup>5</sup> The admission of strangers to the house and its precincts has been considered by select committees. See Reports, Parl. Pap. (H. C.) sess. 1888, No. 132; sess. 1893-4, No. 126; sess. 1908, No. 371. As to the duty of members with regard to the strangers admitted by them, see 33 Parl. Deb. 4 s. 917.

<sup>6</sup> 91 C. J. 319.

<sup>7</sup> 161 C. J. 462, 165 Parl. Deb. 4 s. 1085. Admission to the gallery is governed by regulations made by the Speaker, to whom application must be made each day by a

Misconduct on the part of strangers. *S. O.* 88, 89, Appendix I.

By the standing orders of the Commons, the Serjeant is directed to take into his custody strangers who are in any part of the house or gallery appropriated to members,<sup>1</sup> and strangers who misconduct themselves by a refusal to withdraw, or otherwise; and members of the house are forbidden to bring a stranger, during the sitting of the house, into any part of the house or gallery appropriated to members.<sup>2</sup> The Serjeant has accordingly taken strangers into custody who have come irregularly into the house, or have misconducted themselves there.<sup>3</sup>

Exclusion of strangers from the galleries.

According to ancient usage, the exclusion of strangers from the galleries could, at any time, be enforced without an order of the house; for, on a member taking notice of their presence, the Speaker was obliged to order them to withdraw, without putting a question.<sup>4</sup> On the 18th May and 8th June, 1849, a member took notice that strangers were present, and they were ordered to withdraw. The doors were accordingly closed for upwards of two hours, and no report of the debates, during that time, appeared in the newspapers.<sup>5</sup> Strangers were readmitted without any order of the Speaker. The revival of this exceptional practice led to the appointment of a committee, which unanimously declared against any alteration of the rules of the house.<sup>6</sup> It was not until the 24th May, 1870, that strangers were again ordered to withdraw, in order to avoid publicity being given to a debate upon the Contagious Diseases Acts.<sup>7</sup> This led to further discussion: but the house still adhered to the old rule of exclusion,<sup>8</sup> which was again enforced on subsequent occasions.<sup>9</sup>

minister desiring the attendance of officials from his department, 165 *Parl. Deb.* 4 s. 1450; 59 *H. C. Deb.* 5 s. 1404.

<sup>1</sup> The clerks and officers of the house are not "strangers."

<sup>2</sup> Stow says, "In the year 1584, a new Parliament sat in November, when one Robinson, a lowd fellow, and a skinner, had the confidence to sit in the house all the day, though no member. . . . He remained for some time in the Serjeant's custody, and so, it seems, was dismissed."—*Survey of London and Westminster (Skinners' Company)*. See also 15 *C. J.* 527, from which it appears that members had been prevented from sitting by the pressure of strangers; see also 72 *H. D.* 3 s. 580, 12th Feb. 1844 (*Mr. Christie's motion*). On the 9th March, 1875, two strangers passed into the body of the house, with a number of members pressing in to a division. They were discovered

after the doors were locked and the division was proceeding, and were removed by the Serjeant who reported their intrusion to the Speaker. After the division they were let out, without any report to the house.

<sup>3</sup> 29 *C. J.* 23; 74 *ib.* 537; 86 *ib.* 323; 88 *ib.* 246. On the 13th October, 1908, and the 18th May, 1915, persons who came irregularly into the house were removed by the Serjeant and conducted beyond the precincts.

<sup>4</sup> 15 *H. D.* 1 s. 310 (*Walcheren Expedition*, 1810); 77 *H. D.* 3 s. 138 (see *Mr. Speaker's explanation of the rule*).

<sup>5</sup> 105 *H. D.* 3 s. 662; *ib.* 1320.

<sup>6</sup> *Parl. Pap.* (*H. C.*), sess. 1849–50, No. 498.

<sup>7</sup> 201 *H. D.* 3 s. 1307.

<sup>8</sup> 201 *H. D.* 3 s. 1640.

<sup>9</sup> 203 *H. D.* 3 s. 651; 217 *ib.* 207; 223 *ib.* 1693.

The inconvenience of the rule prompted the house to agree to a resolution, 31st May, 1875, which provided that, if notice was taken that strangers were present, the Speaker, or the chairman, should forthwith put the question that strangers be ordered to withdraw;<sup>1</sup> reserving to the Speaker, or the chairman, the power, whenever he thought fit, to order the withdrawal of strangers from any part of the house.<sup>2</sup> The practice prescribed by that resolution was followed by the Speaker in subsequent sessions,<sup>3</sup> and the resolution was made a standing order in 1888.<sup>4</sup> Various unsuccessful attempts have been made to secure the withdrawal of strangers under this standing order,<sup>5</sup> but on the 25th and 26th April, 1916, when notice was taken of the presence of strangers, the question for their withdrawal was agreed to.<sup>6</sup>

During divisions of the house, strangers were entirely excluded until 1853, but from 1853 until 1906 were merely directed to withdraw from below the bar (see p. 328). Since 1906 they have not been required to withdraw either from the seats below the bar or from those reserved for officials (see p. 189).

Individual instances of misconduct on the part of strangers admitted to the galleries of the house have occurred from time to time, and the offenders have been removed from the galleries.<sup>7</sup> On the 25th April, 1906, the debate in the house was interrupted by loud

S. O. 90.  
Appendix  
I.

With-  
drawal of  
strangers  
during a  
division.

Miscon-  
duct of  
strangers  
in  
galleries.

<sup>1</sup> Such an order does not extend to the ladies' gallery, which is not supposed to be within the house. When an order has been made for the withdrawal of strangers ladies can therefore only be informed of the subject of debate and left to withdraw or not at their own discretion, 230 H. D. 3 s. 1553. On the 25th and 26th April, 1916, by the direction of the Speaker, the ladies' gallery was not opened.

<sup>2</sup> 130 C. J. 243.

<sup>3</sup> 131 C. J. 77, 79, 227 H. D. 3 s. 1405, 1420; 131 C. J. 348, 230 H. D. 3 s. 1555; 133 C. J. 186, 236.

<sup>4</sup> 143 C. J. 85.

<sup>5</sup> 145 C. J. 72; 161 ib. 414, 417, 452.

<sup>6</sup> 171 C. J. 68, 81 H. C. Deb. 5 s. 2463, 2486. On these occasions, the house further resolved that the remainder of the day's sitting should be a "secret session." By an Order in Council of 22nd April, 1916, a regulation (No. 27A) was made under the Defence of the Realm Consolidation Act, 1914, by which it was provided that if either House

of Parliament, in pursuance of a resolution passed by that house, held a secret session, it should not be lawful for any person in any newspaper, periodical, circular, or other printed publication, or in any public speech, to publish any report of, or to purport to describe, or to refer to, the proceedings at such session, except such report thereof as might be officially communicated through the Official Press Bureau.—*London Gazette*, 1916, p. 4189.

<sup>7</sup> Pamphlets having been thrown from the strangers' gallery into the house, the offender was removed from the gallery by the Serjeant, and being conducted by a constable beyond the precincts, was set at liberty, with a caution, *Times* newspaper, 20th July, 1891. The Serjeant, with or without an express direction from the Speaker, has removed from the gallery of the house a stranger who was behaving in a disorderly manner, 63 Parl. Deb 4 s. 221. See also *Times* newspaper, 24th August, 1893, 13th May, 1905.

cries from the ladies' gallery, and the Speaker directed it to be closed.<sup>1</sup> In consequence of the interruptions to debate which took place from the strangers' and ladies' galleries on the 28th October, 1908, both were closed for a time by the Speaker's directions,<sup>2</sup> and a select committee was appointed to inquire into the rules and regulations under which strangers were admitted to the house and its precincts.<sup>3</sup>

The committee made various recommendations as to the conditions under which strangers should be admitted to the galleries in the future, but recommended that the galleries should not be reopened until an Act had been passed making serious disturbance there an offence cognizable by the ordinary criminal courts.<sup>4</sup> A bill was introduced for this purpose, but was not proceeded with,<sup>5</sup> and the galleries were reopened by direction of the Speaker on the 10th May, 1909, under regulations designed to carry out the recommendations of the select committee as to the admission of strangers.<sup>6</sup>

Soldiers in uniform.

On the 3rd August, 1855, notice was taken that two soldiers in uniform, lately returned from the Crimea, had been refused admission to the strangers' gallery. The Speaker stated that there was no rule for their exclusion ;<sup>7</sup> and soldiers in uniform, but unarmed, have since been freely admitted.

A description may now be given of the forms observed on the prorogation of Parliament at the close of a session.

Prorogation of Parliament.

If his Majesty attends in person to prorogue Parliament at the end of the session, the same ceremonies are observed as at the opening of Parliament :<sup>8</sup> the attendance of the Commons in the House of Peers is commanded ; and, on their arrival at the bar, the Speaker addresses his Majesty, on presenting the supply bills, and adverts to the most important measures that have received the sanction of Parliament during the session.<sup>9</sup> The royal assent is then given to the bills which are awaiting that sanction, and his Majesty reads his speech to both houses of Parliament himself, or by his chancellor (see p. 161) ; after

<sup>1</sup> 155 Parl. Deb. 4 s. 1584.

<sup>2</sup> 195 Parl. Deb. 4 s. 364. 368. 403.

<sup>3</sup> 163 C. J. 477.

<sup>4</sup> Parl. Pap. (H. C.) sess. 1908, No. 371, p. iii.

<sup>5</sup> 164 C. J. 17. 112. 398, 3 H. C. Deb. 5 s. 1383.

<sup>6</sup> 4 H. C. Deb. 5 s. 742. For the regulations circulated to members, see Supplement to the Votes, sess. 1909, p. 361.

<sup>7</sup> 139 H. D. 3 s. 1748.

<sup>8</sup> The last occasion, 12th Aug. 1854, 86 L. J. 521, 109 C. J. 503, 135 H. D. 3 s. 1549.

<sup>9</sup> See debate in 1814, on Mr. Speaker Abbot's speech, referring to a bill which had not received the assent of the house, 69 C. J. 203, 27 H. D. 1 s. 466, Colchester, ii. 453-459. 483-496.

which the lord chancellor, having received directions from his Majesty for that purpose, addresses both houses in this manner : " My lords and gentlemen, it is his Majesty's royal will and pleasure that this Parliament be prorogued to " a certain day, " to be then here holden ; and this Parliament is accordingly prorogued," &c. When his Majesty is not present at the end of the session, Parliament is prorogued by a commission under the great seal, directed to certain peers, who, by virtue of their commission, prorogue the Parliament. The attendance of the Commons is desired in the House of Peers ; and, on their coming, with their Speaker, the lord chancellor states to both houses, that his Majesty, not thinking fit to be personally present, has caused a commission to be issued under the great seal, for giving the royal assent to bills. The commission is then read, and the Speaker, without any speech, delivers the supply bills to the Clerk of the Parliaments, who comes to the bar to receive them. The royal assent is signified to the bills in the usual manner ; after which the lord chancellor, in pursuance of his Majesty's commands, reads the royal speech to both houses.<sup>1</sup> The commission for proroguing the Parliament is next read by the Clerk ; and the lord chancellor, by virtue of that commission, prorogues the Parliament accordingly.

<sup>1</sup> For cases of prorogation without a King's speech, see 37 L. J. 383 ; 53 ib. 764. 1 Creevey Papers, 341 ; 2 ib. 5.

## CHAPTER VIII.

METHOD AND ORDER IN THE TRANSACTION OF BUSINESS  
IN PARLIAMENT.

HOUSE  
OF  
LORDS.  
Time of  
meeting.

THE Lords formerly met, for despatch of legislative business, at five o'clock in the afternoon : but on the 24th March, 1882, they resolved to meet at a quarter-past four and that the public business for the day should commence at half-past four o'clock, in order to extend the time for debate ;<sup>1</sup> and this arrangement has since been continued. When there is judicial business for consideration, the Lords meet in the morning, usually at half-past ten o'clock. At the conclusion of such business, the sitting is informally suspended until a quarter-past four o'clock.<sup>2</sup>

The Lords, as a rule, adjourn over Ash Wednesday and Ascension-day ; but if they meet on those days, they commence proceedings by attending divine service at Westminster Abbey.<sup>3</sup> The Lords also rarely meet, except for formal business, on Friday or Saturday.<sup>4</sup>

Adjourn-  
ment.

No hour is appointed for the rising of the house ; and the adjournment cannot take place save upon a question proposed by the Lord Speaker, and agreed to by the house under standing order No. 20.<sup>5</sup>

<sup>1</sup> 114 L. J. 80, 267 H. D. 3 s. 1784.

<sup>2</sup> When there has been only judicial business to be transacted, the house has adjourned to a day named, "except for judicial business," 140 L. J. 360. In such circumstances usually, however, the house adjourns to the day upon which the judicial business is to be taken, it being understood that legislative business will not be transacted. On the 30th July, 1914, the House of Lords had so adjourned till the following Monday, August 3rd, it being arranged that legislative business should not be taken until Tuesday the 4th. In consequence of the state of public affairs, the lord chancellor summoned the lords to meet on the 3rd for legislative business, 146 L. J. 354, 17 H. L. Deb. 5 s. 308. 311.

<sup>3</sup> 113 L. J. 76 ; 116 ib. 52.

<sup>4</sup> Friday has been substituted for Wed-

nesday as the day on which the house would not ordinarily sit since the autumn session of 1906, 138 L. J. 353 ; 139 ib. 21. On Saturday, the 4th April, 1829, the debate in the House of Lords, on the second reading of the Catholic Relief Bill, was adjourned from two o'clock in the morning till two o'clock the same afternoon.

<sup>5</sup> On the 10th August, 1914, the house resolved "That whenever during the present session of Parliament the house stands adjourned for more than two days, and it appears to the satisfaction of the Lord Chancellor that the public interest requires that the House should meet at any earlier time during such adjournment the Lord Chancellor may give notice to the Peers that he is so satisfied, and thereupon the House shall meet at the time



Formerly, the pressure of business in the House of Lords had not been so great as to require strict rules in regard to notices : but by standing order No. 21 the following regulations are established :—

Arrangement of business.

"All notices of proceedings on public bills, and of other matters, shall be inserted in the minutes of each day, according to the priority of every such notice, or as the lords giving the same may have agreed, and the house shall always proceed with the same in the order in which they shall so stand, unless the lord who shall have given any such notice shall withdraw the same, or shall, with leave of the house, consent to its postponement, or shall be absent at the appointed time after the house shall have entered upon the consideration of the said notices, in which latter case it shall be held to be a lapsed order, and not be proceeded with, until after the notice shall have been renewed.

"On all occasions notices to suspend any of the standing orders of the house, and notices relating to private bills, shall be disposed of before the house proceeds to the other notices.

"On Tuesdays and Thursdays the bills which are entered for consideration on the minutes of the day, shall, with the before-mentioned exception, have precedence of all other notices : but petitions relating to any such bill may be presented immediately before the motion is made to proceed with the bill.

"Any business for which notice is not required, and all proceedings relating to private bills, may be entered upon before the notices of the day are called for : but the house will proceed with the notices in preference to other matters at any time after half-past four o'clock, at the request of any lord who may have a notice on the minutes."

If at the close of the speech of any lord, the proceedings on business then in hand be adjourned, or, if, the house being in committee, it is ordered that the house be resumed, the house may thereupon, without notice given, make further order that the business in question be taken first, either at some later hour of the evening, or on some future sitting day to be then fixed.

Precedence of adjourned business.  
S. O. 22.  
(H. L.)

The upper house may proceed with business if only three lords be present, of whom one may be a lord attending to take the oath. If, however, on a division upon any stage of a bill in the house or in committee, it appears that thirty lords are not present, the Lord Speaker, or chairman, declares the question not decided, and the debate thereon is adjourned to the next sitting of the house, or, the house being resumed, the committee is set down for the next sitting of the house.<sup>1</sup>

Quorum.  
S. O. 33.  
(H. L.)

Questions are addressed, before the commencement of public Questions

stated in such notice and shall transact its business as if it had been duly adjourned to that time," 146 L. J. 394. On the 19th May, 1915, the house ad-

joined till "the same day as that fixed by the House of Commons," 18 H. L. Deb. 5 s. 1062.

to ministers and others.

<sup>1</sup> 141 L. J. 210.

business, to ministers of the Crown concerning measures pending in Parliament, or public affairs, or matters of administration, and to other lords who have charge of a bill, or who have given notices of motions, or are otherwise concerned in some business before the house.<sup>1</sup> Interference on the part of the house with these questions is of infrequent occurrence: but on one occasion, 7th June, 1858, when a noble lord proposed to renew a notice of certain questions, the house resolved "that the said questions had been sufficiently answered and ought not to be renewed;"<sup>2</sup> and, accordingly, the proposed notice was not received by the Clerk. Again, on the 12th March, 1883, notice having been given of certain questions, it was resolved "that such questions be not put."<sup>3</sup>

Debate on  
questions  
to mem-  
bers.

In the Lords debate is permitted in asking and answering questions, and in commenting upon them, without any motion being proposed to the house.<sup>4</sup> In 1867, the Lords' committee on public business, while recognizing and approving this practice, recommended that notice of questions should be given in the minutes, except in cases of urgency. In consequence, it was resolved, that "where it is intended to make a statement, or raise a discussion on asking a question, notice of the question should be given in the orders of the day and notices."<sup>5</sup> Under these conditions important debates are frequently raised.

S. O. 21.  
(H. L.)

HOUSE  
OF COM-  
MONS.  
Time of  
meeting.

The House of Commons formerly met at an early hour in the morning, generally at eight o'clock, but often even at six or seven o'clock, and continued till eleven, the committees being appointed to sit in the afternoon. In the time of Charles II., nine o'clock was the usual hour for commencing public business, and four o'clock for its conclusion. At a later period ten o'clock was the ordinary time of meeting; and the practice of adjourning the house nominally until that hour continued until 1806, though so early a meeting had long been discontinued.<sup>6</sup> Until the year 1888, by a custom then in force for about a century, a quarter before four o'clock was the usual hour of meeting. This hour was chosen to provide that the house should meet as late in the day as possible, and yet enable a new member to take the oath between the hours of nine in the morning and four in the afternoon,

<sup>1</sup> Perhaps the earliest example of a question to ministers is to be found on the 9th Feb. 1721, when Lord Cowper asked a question of the administration, and was answered by the Earl of Sunderland, 7 Parl. Hist. 709.

<sup>2</sup> 150 H. D. 3 s. 1600.

<sup>3</sup> 115 L. J. 53.

<sup>4</sup> 95 H. D. 3 s. 1052.

<sup>5</sup> 100 L. J. 103.

<sup>6</sup> Vowell's Order and Usage of the Parliaments in England, 1572, 1 Somers Tracts, 175; 1 C. J. 156, 705; 2 ib. 116, 120; 8 ib. 271; 9 ib. 606; 13 ib. 858.

pursuant to statutory regulations then in force.<sup>1</sup> The statutes which prescribed those hours have been repealed; and new members can now be sworn in, either at the opening or the close of a sitting (see p. 150), yet the influence of these regulations still exists in the usage that no adjournment of the house caused by the absence of a quorum can take place before four o'clock (see p. 207). Hence also arose the practice that, when the house desired to meet at an hour earlier than four o'clock, no order was made to that effect and the Speaker fixed, in accordance with the known intention of the house, the hour when the next sitting would be held; whilst if the house met at an hour later than four, the hour was fixed by an order of the house.<sup>2</sup> It is now, however, the usual practice of the house to fix by resolution the hour of meeting when it desires to meet at any time other than that prescribed by the standing orders.<sup>3</sup>

The house when in session, unless it orders otherwise, must meet every day of the week except Sunday.<sup>4</sup> <sup>Ordinary days of meeting.</sup> *S. O. 24, Appendix I.* Sittings on Saturday, however, are rare. By standing order No. 24, so long as the committees of supply and ways and means are open, the house, unless it otherwise resolves, stands adjourned at its rising on Friday until the following Monday. Until these committees have been set up, and again when they have been closed, the house, unless it desire specially to sit on Saturday, passes a resolution on the Friday to adjourn till the following Monday.<sup>5</sup> The necessity for such a resolution has been obviated sometimes by a resolution to the effect that the house when it adjourned on a Friday should, unless it otherwise resolved, stand adjourned until the following Monday.<sup>6</sup>

Before the year 1888, the freedom of the house as regards the hour and time for sitting, working and rising, except on Wednesdays, <sup>Hours of meeting.</sup>

<sup>1</sup> 2 Hatsell, 90.

<sup>2</sup> On the opening of the Great Exhibition, 1st May, 1851, the house adjourned to six o'clock p.m.; on the naval review at Spithead, 11th Aug. 1853, to ten o'clock at night. On Tuesday, 26th April, 1881, and on Thursday, 11th May, 1882, the house met at nine o'clock, in order to enable ministers and members to attend the funerals of the Earl of Beaconsfield and Lord Frederick Cavendish, respectively; on 15th Aug. 1904, the house met at five o'clock, and on 18th July, 1912, the house met at seven o'clock to enable members to attend the royal garden party at Windsor, 106 C. J. 189; 108

ib. 816; 136 ib. 198; 137 ib. 190; 159 ib. 421; 167 ib. 282.

<sup>3</sup> 146 C. J. 412; 149 ib. 39.

<sup>4</sup> On 3rd February, 1915, and the 22nd February, 1916, the house resolved not to meet on Fridays during the remainder of the session, unless it resolved otherwise, 170 C. J. 40. 138. 175. 221. 315. 342; 171 ib. 13. 247. 259.

<sup>5</sup> This Saturday holiday is said to have arisen from Sir Robert Walpole's devotion to hunting, 1 Lecky, Hist. of Eighteenth Century (1st Ed.) 331.

<sup>6</sup> 163 C. J. 388; 164 ib. 395; 165 ib. 303; 166 ib. 434; 167 ib. 367; 168 ib. 278; 169 ib. 361; 170 ib. 9. 40.

and the sittings held at two o'clock, was almost wholly uncontrolled. Standing orders which were passed in that year and which were amended in 1902 and 1906, now prescribe the hours for the meeting of the house, for the interruption of business and for the adjournment of the house, during every day of the week except Saturday and Sunday.<sup>1</sup> On Monday, Tuesday, Wednesday and Thursday the house meets at a quarter before three o'clock, while on Friday it meets at noon.<sup>2</sup> When the house sits on Saturday, if the house has not ordered otherwise,<sup>3</sup> the Speaker, according to usage, fixes twelve o'clock for the meeting of the house, that being the customary hour.<sup>4</sup>

S. O. 1, 2,  
Appendix  
I.

Announce-  
ment of  
hour of  
meeting.

The official announcement of the hour appointed for the next meeting of the house is made by an entry placed, under the Speaker's authority, at the close of the daily record of the sittings of the house, styled "The Votes and Proceedings;" as the announcement of the appointed hour of meeting in the motion which adjourns the house is an exceptional occurrence.<sup>5</sup>

Interrup-  
tion of  
business  
under  
standing  
order.

S. O. 1,  
Appendix  
I.

On every day of the week, except Saturday and Sunday, the working hours of the house are subject to the following regulations. Business is interrupted on Monday, Tuesday, Wednesday and Thursday at eleven o'clock, when, if the house be not engaged on exempted business (see p. 200), the Speaker rises from the chair and interrupts the business then under consideration; or, if the house be in committee, the chairman leaves the chair to make his report to the house. On Friday the moment of interruption is five o'clock.<sup>6</sup> The business under consideration at the moment of

<sup>1</sup> From the 27th Feb. 1888, till the 2nd May, 1902, on Monday, Tuesday, Thursday and Friday the hour of meeting was three o'clock in the afternoon and noon on Wednesday, 143 C. J. 65; 157 ib. 204. Sittings of the house known as "morning sittings" were sometimes held, usually on Tuesdays and Fridays, from two o'clock until seven o'clock, when the house suspended its sitting until nine o'clock. The standing orders of the 7th March, 1888, and 3rd March, 1892, which regulated these sittings were repealed, 1st Dec. 1902, 157 ib. 501. From the 2nd May, 1902, until Easter, 1906, the house met on Monday, Tuesday, Wednesday and Thursday at two o'clock for an afternoon sitting, and at nine o'clock for an evening sitting, business being interrupted at half-past

seven o'clock and midnight.

<sup>2</sup> The sitting of the house on Wednesday, 1st Aug. 1877, was absorbed by a continuous sitting of the house begun on the day previous, while the house was prevented from meeting on Wednesday, 20th July, 1904, and on Thursday, 21st March, 1907, by the continuation of the sitting of the previous day over the hour of meeting (see extraordinary sittings of the house, p. 169, n. 6).

<sup>3</sup> 128 C. J. 122; 145 ib. 222; 148 ib. 234; 150 ib. 331; 156 ib. 419; 163 ib. 386; 167 ib. 533.

<sup>4</sup> See Speaker's ruling, 250 H. D. 3 s. 1668.

<sup>5</sup> 164 C. J. 547.

<sup>6</sup> When there was no opposition to such a course the house has again re

interruption stands over until the next sitting or such other sitting as the member in charge thereof may appoint.

After the business under consideration at eleven o'clock, or at five o'clock on Friday, has been disposed of, no opposed business can be taken,<sup>1</sup> but the transaction of business can be carried on during the time set apart for unopposed business, although debate may arise thereon, until a division be challenged upon a question proposed from the chair, or objection be taken to further proceeding. The business then becomes opposed business; and further consideration thereof must be adjourned in accordance with the provisions of the standing order until the next sitting, or until such other sitting on any day on which the house ordinarily sits as the member in charge of the business may appoint.<sup>2</sup>

Trans-  
action of  
business  
after mo-  
ment of  
interrup-  
tion.

If, during the time when no opposed business can be taken, an order of the day for a committee on a bill, not yet in progress, is read, the Speaker, although objection be signified to his leaving the chair, nevertheless quits the chair forthwith in pursuance of standing order No. 51.<sup>3</sup> If, however, the bill is already in progress, when the order of the day is read, and objection be taken to proceeding with the bill, the Speaker does not quit the chair, but calls on the member in charge of the bill to name a day for its future consideration. When objection is taken in committee, the chairman forthwith leaves the chair to report progress.<sup>4</sup>

Procedure  
on order  
being read  
for com-  
mittee on  
a bill.  
S. O. 51,  
Appendix  
I.

In the case of opposed business essential to the completion of the transaction on which the house is engaged at the moment of the interruption of business, the Speaker has overruled an objection to the taking of opposed business after that hour. Thus he has not

Formal  
motions  
during  
time for  
un-  
opposed  
business.

solved itself into committee on a bill, on which, at the appointed moment of interruption, the chairman had reported progress. The committee has then proceeded through the bill, and reported it, 115 C. J. 166; 143 ib. 273; 149 ib. 62. For cases in which the same course has been adopted, but objection has been taken to further progress in committee, see 150 ib. 64; 162 ib. 280; 166 ib. 479.

<sup>1</sup> The standing order of 18th February, 1879, dealing with the transaction of opposed business after *half-past twelve* o'clock at night was repealed, 7th March, 1888, 143 C. J. 86.

<sup>2</sup> As during the time for unopposed business no division can be taken, the

Speaker has disregarded a challenge to the question put on a motion for the adjournment of the house, and, treating the motion as a formal motion, has declared that the ayes had it, and left the chair, 142 Parl. Deb. 4 s. 1512, while for the same reason he has refused to propose an amendment to the question for adjournment, 149 ib. 1494.

<sup>3</sup> When notice has been given of instructions to the committee on the bill which were out of order the Speaker has ruled upon them, and then left the chair under the standing order, 45 Parl. Deb. 4 s. 1638; 156 C. J. 152, 93 Parl. Deb. 4 s. 320.

<sup>4</sup> 143 C. J. 243.

permitted opposition to formal questions, such as the addition of the words, "upon this day six months,"<sup>1</sup> when the house has disagreed to the second reading of a bill; or the entry of the Speaker's reprimand or admonition upon the journal of the house;<sup>2</sup> or motions for the appointment and nomination of a select committee consequent upon the business then before the house.<sup>3</sup> Nor can an objection that the proceeding takes place during the time set apart for unopposed business, be made to a formal motion for the purpose of carrying on the business of the house, such as a motion for the first reading of a bill from the Lords; motions consequent upon a message from that house; appointing a day for the consideration of their amendments to bills;<sup>4</sup> ordering the presentation of papers moved by a minister of the Crown;<sup>5</sup> a motion for an unopposed return (see p. 212); a motion for the discharge of an order for the presentation of an address for a return by the member who had moved the address;<sup>6</sup> or for the withdrawal of a bill by the member in charge thereof.<sup>7</sup>

Dilatory motions at moment of interruption.

Dilatory motions pending at the moment of interruption, *i.e.* motions for the adjournment of the house or of the debate, or that the chairman do report progress, or do leave the chair, lapse without question put<sup>8</sup> (see p. 252). At that moment also closure may be moved; and if closure be moved, or if proceedings under the closure rule be then in progress, the Speaker, or chairman, does not leave the chair until the questions consequent thereon, and on any further question, as provided in standing order No. 26, have been decided (see p. 314).

Exempted business. S. O. 1 (2) (7) Appendix I.

Proceedings on a bill originating in committee of ways and means or proceedings made pursuant to an Act of Parliament<sup>9</sup> or standing order are exempted from interruption under standing order No. 1.<sup>10</sup>

<sup>1</sup> 143 C. J. 143.

<sup>2</sup> 147 C. J. 167, 3 Parl. Deb. 4 s. 964.

<sup>3</sup> 142 C. J. 75, 310 H. D. 3 s. 1854; 144 C. J. 387, 338 H. D. 3 s. 1789.

<sup>4</sup> 329 H. D. 3 s. 1552.

<sup>5</sup> 266 H. D. 3 s. 1811; 5 H. C. Deb. 5 s. 1162.

<sup>6</sup> 3rd June, 1904, Mr. Speaker's ruling not recorded in Parliamentary Debates.

<sup>7</sup> 323 H. D. 3 s. 1883; 33 Parl. Deb. 4 s. 1428.

<sup>8</sup> On adjournment at six o'clock on Wednesday, 144 C. J. 55; interruption at midnight, 144 ib. 134; 145 ib. 252; 149 ib. 7; 159 ib. 270; progress, at midnight, 145 ib. 370.

<sup>9</sup> The principal proceedings under Acts of Parliament relate to draft orders in council, rules of court and administrative orders and regulations presented to both houses as parliamentary papers. For the conditions under which proceedings with regard to these rules and orders are exempted from interruption, see p. 569. See also Mr. Speaker's ruling that an address for the appointment of a judge under the Supreme Court of Judicature Act, 1910 (10 Edw. VII. & 1 Geo. V. c. 12), would be exempted business, 41 H. C. Deb. 5 s. 381.

<sup>10</sup> In the case of a motion of an unofficial member, this provision is rendered nugatory when an order of the house is

It is also provided, by the same standing order, that at the commencement of business on any day, except Friday or Saturday, a motion may be made by a minister of the Crown, and decided without debate,<sup>1</sup> that the proceedings on any specified business, if under discussion at eleven o'clock, be not interrupted,<sup>2</sup> or that such proceedings, if under discussion when the business is postponed at a quarter-past eight o'clock (under standing order No: 4 (b), 8 (3), or 10) (see p. 209), be resumed and proceeded with, though opposed, after the interruption of business at eleven o'clock,<sup>3</sup> and if such a motion is carried, such business is exempt from the provisions of the standing order which regulate the interruption of business and the adjournment of the house.

By a convenient, and indeed necessary, elasticity of practice, which arose in consequence of the introduction of fixed hours for the transaction of business upon Wednesdays, the standing orders which prescribe a limit to the time for the transaction of business are not so strictly enforced as to prevent the house from completing, when the fixed hour arrives, the proceeding on which a decision is in process of being taken.<sup>4</sup> Procedure thereon is extended, under this practice, not only beyond the hour appointed for the interruption of business, but also beyond the hour appointed for the adjournment of the house. Consequently, whenever a question is under decision, either by collecting the voices or by a division, at an hour appointed by the standing orders for a cessation of the transaction of business, or of the sitting of the house, the decision of the house is announced and acted upon after that fixed hour. Nor does the fact that the moment is passed when business should be interrupted, or the house be adjourned, prevent the proposal from the chair of the main, original or any further questions consequent upon that decision of the house, and any such question may be decided, if necessary, by a division.<sup>5</sup>

Disposal of questions pending at moment of interruption.

If, however, when such a question is proposed from the chair, a member rises to object to further proceeding, or offers to speak to

Effect of objection thereon.

in force for its adjournment at the conclusion of government business, 180 Parl. Deb. 4 s. 1621; 196 ib. 559, unless special provision is made for its consideration, 169 C. J. 361.

<sup>1</sup> An addition to, or variation from, the forms prescribed by standing order 1 (7) renders such motions open to debate, 148 Parl. Deb. 4 s. 1144.

<sup>2</sup> 160 C. J. 292.

<sup>3</sup> 162 C. J. 59; 163 ib. 103.

<sup>4</sup> 128 C. J. 403, 217 H. D. 3 s. 1230-32; 233 H. D. 3 s. 306.

<sup>5</sup> The case is unusual, so it may be mentioned that the Speaker, on consideration of the amendments made by the Lords to a bill, when a proposed amendment to a Lords' amendment was disposed of, proposed the question for agreeing to the Lords' amendment, although the moment for the interruption of business had passed, 146 C. J. 165.

the question, his action converts the business then under transaction into opposed business;<sup>1</sup> as his intervention brings into force the provisions of the standing order. The Speaker, or in committee the chairman, therefore proceeds to interrupt the business;<sup>2</sup> and its consequent interruption under the standing order is inevitable, unless thereupon closure be moved, pursuant to paragraph 4 of standing order No. 1 (see p. 316).

Illus-  
trations of  
procedure  
after  
moment of  
interrup-  
tion.

The practice of completing business begun before the fixed hour by putting successively all questions pending at the moment of interruption, is best elucidated by examples.

Unop-  
posed  
business.

The first examples will show the practice of the house regarding questions put from the chair after the time prescribed for the interruption of business, or for the adjournment of the house, when objection is not taken to further proceeding, and closure is not moved. (1) A division was in progress, at the time fixed for the adjournment of the house, on an amendment to the main question to leave out therefrom all the words after the first word, "That," in order to add other words. The question, that the words proposed to be left out stand part of the question, was negatived; and then the questions for the addition of the words of the amendment, and the main question, so amended, were successively put from the chair.<sup>3</sup> (2) A division was in progress, at the time fixed for the interruption of business, on the question that the word "now" should stand part of the question for the second reading of a bill. The question upon the word "now" was negatived; the words, "upon this day six months," were added: the main question so amended was agreed to, and the bill was put off for six months.<sup>4</sup> (3) When a division on an instruction to a committee on a bill was continued until after the time fixed for the interruption of business, and notice of another instruction stood upon the paper, which was out of order, the Speaker, having pointed out the informality of that notice, left the chair forthwith, under standing order No. 51, stating that he did so in order to complete the business begun before the time fixed for the interruption of business.<sup>5</sup> (4) The division upon the question for the Speaker's leaving the chair on first going into

<sup>1</sup> To create an interruption of business, a motion to adjourn the debate is out of order, Tuesday, 14th May, 1889. Mr. Speaker's ruling not reported.

<sup>2</sup> 142 C. J. 249, 315 H. D. 3 s. 488; 147 C. J. 141.

<sup>3</sup> 144 C. J. 180.

<sup>4</sup> 132 C. J. 111, 233 H. D. 3 s. 306.

<sup>5</sup> 147 C. J. 154, 3 Parl. Deb. 4 s. 669; see also 152 C. J. 83, 45 Parl. Deb. 4 s. 1638.



committee on the army estimates was not concluded until after the time fixed for the interruption of business. As the question was decided in the affirmative, the Speaker left the chair and the house resolved itself into the committee.<sup>1</sup>

Examples will now be given of the adjournment of further proceedings, upon objection taken, the time prescribed for the transaction of opposed business having elapsed, and the right to move closure at the moment of the interruption of business not being exercised.

Opposed  
business:

(1) When to the question that a bill be now read a second time, an amendment was moved to leave out those words, and to substitute a statement urging reasons why the bill should not be read a second time, and the house had decided that the words proposed to be left out should not stand part of the question, the question for the addition of the words of the amendment was proposed from the chair: but, as the hour for interruption was passed, and objection was taken to further proceeding, the debate was immediately adjourned.<sup>2</sup>

(2) Again, on the consideration of a bill on report, when a division on the second reading of a new clause was concluded after the hour fixed for the interruption of business, the Speaker announced that if no amendments were offered, he would put the question, "That the clause be added to the bill:" but on a member intimating that he had an amendment to offer, the Speaker adjourned further proceedings on the clause, and the consideration of the bill was appointed for the morrow.<sup>3</sup> (3) When an amendment to leave out words from a proposed question in order to insert other words had been moved and the question "that the words proposed to be left out stand part of the (original) question" had been negatived, the question for insertion of the words of the amendment was proposed after the moment of interruption. A member rose to move an amendment to the words proposed to be inserted, but as objection was taken to further proceeding the debate at once stood adjourned.<sup>4</sup>

Procedure in a committee of the whole house regarding questions pending at the moment of interruption, follows the procedure of the house, including the power of moving closure on the interruption of business.<sup>5</sup>

Procedure  
in com-  
mittee on  
questions  
pending at  
interrup-  
tion of  
business.  
Adjourn-  
ment of  
the house.  
S. O. 1,  
Appendix  
I.

Pursuant to standing order No. 1, on Mondays, Tuesdays, Wednesdays and Thursdays, the house, if not previously adjourned, sits till

<sup>1</sup> 159 C. J. 71.

<sup>2</sup> 147 C. J. 141.

<sup>3</sup> 146 C. J. 372, 354 H. D. 3 s. 877.

<sup>4</sup> 163 C. J. 72, 185 Parl. Deb. 4 s. 471.

<sup>5</sup> 144 C. J. 102.

half-past eleven o'clock, unless a bill or proceeding exempted from the operation of the standing order (see p. 200) be at that moment under consideration.<sup>1</sup> In such a case the Speaker does not quit the chair until the exempted business is concluded, after which the unopposed business that stands upon the notice paper is disposed of under the conditions imposed by standing order No. 1 on business taken after eleven o'clock (see p. 199). As soon as such business is disposed of, the Speaker adjourns the house without question put.<sup>2</sup> If more than one exempted motion or order of the day stands upon the notice paper, and the first is not disposed of until after the time appointed for the adjournment of the house without question put, other exempted business may be taken,<sup>3</sup> and in that case, adjournment without question put is postponed until that matter and the remaining business upon the notice paper for that sitting has been disposed of.

On  
Friday.  
S. O. 3.  
Appendix  
I.

At a Friday sitting, the adjournment of the house takes place without question put as soon as the business on the paper has been disposed of,<sup>4</sup> or at half-past five o'clock in the afternoon precisely; and as standing order No. 1 makes no provision for the consideration at that sitting of exempted business, the house cannot sit on a Friday beyond half-past five o'clock, save to complete business<sup>5</sup> (see p. 202), or by order. If the house continues sitting on Friday beyond half-past five o'clock for the consideration of a special matter,<sup>6</sup> or to complete business,<sup>7</sup> the Speaker, immediately upon the conclusion thereof, adjourns the house forthwith.

On  
Saturday.

The time for the adjournment of the house on Saturday is not prescribed by standing order.

Adjourn-  
ment in  
case of  
grave  
disorder.  
S. O. 21.  
Appendix  
I.

In the event of grave disorder arising in the house, the Speaker may adjourn the house without question put if he thinks it necessary to do so or he may suspend the sitting for a time to be named by him.<sup>8</sup>

When it is intended that the house should be adjourned to a day

<sup>1</sup> Unless exempted business has been reached at half-past eleven o'clock, the Speaker at that hour adjourns the house.

<sup>2</sup> 153 C. J. 49; 155 ib. 54. 76. 99; 159 ib. 250. 336. 349; 160 ib. 41, 142 Parl. Deb. 4 s. 147; 161 C. J. 156. 219, 156 Parl. Deb. 4 s. 531, 158 ib. 231; 162 C. J. 20. 32. 61. 71; 163 ib. 117; 170 ib. 255. 339. 342; 171 ib. 30. 77. 80.

<sup>3</sup> 143 C. J. 404; 144 ib. 446.

<sup>4</sup> 145 Parl. Deb. 4 s. 268.

<sup>5</sup> A motion for the committal of a bill made immediately after its second read-

ing is decided forthwith, although the time for the adjournment of the house is passed (see p. 362).

<sup>6</sup> 145 C. J. 546; 165 ib. 265; 170 ib. 321; 171 ib. 250.

<sup>7</sup> 164 C. J. 210.

<sup>8</sup> 160 C. J. 202; 166 ib. 351; 169 ib. 237. On the 16th November, 1912, the Speaker suspended the sitting for an hour. When he resumed the chair, the state of disorder continued and he adjourned the house without question put, 167 C. J. 409. See also p. 303, n. 5.

beyond the next sitting day, a motion is made, by a member of the government, that the house do "now,"<sup>1</sup> or at its rising,<sup>2</sup> or at the conclusion of the sitting,<sup>3</sup> or at its rising on a future day,<sup>4</sup> adjourn until the specified day.<sup>5</sup>

Adjourn-  
ment be-  
yond the  
next day  
of sitting.

Except on occasions when a quorum of the house is not present (see p. 206), or when the Speaker, in pursuance of a standing or other order, adjourns the house without question put, the house can only be adjourned upon a question put from the chair.<sup>6</sup>

Adjourn-  
ment on  
question.

The sitting of the house is occasionally suspended with the intention of resuming the transaction of business at a later hour. A suspension of the sitting always occurs on the opening day of a session (see p. 162).<sup>7</sup> A sitting may also be suspended on other occasions, as when a bill from the Commons is under consideration by the House of Lords,<sup>8</sup> or whilst the house waits for a message from the lords commissioners.<sup>9</sup> If government business is concluded before a quarter-past eight o'clock on a day when leave has been given to move the adjournment of the house under standing order No. 10 (see p. 226); or opposed private business has been set down by direction of the chairman of ways and means (see p. 210); or notices of motions in the names of unofficial members have precedence at that hour (see p. 230), the sitting is informally suspended until a quarter-past eight o'clock. During the suspension of a sitting, the Speaker, the mace being left upon the table, retires from the house, and returns at the appointed hour, when business is resumed without counting the house. As, technically, the house continues sitting, these occurrences are not noted in the journal.<sup>10</sup>

Suspen-  
sion of a  
sitting.

<sup>1</sup> 147 C. J. 419; 148 ib. 178; 158 ib. 114. 213; 159 ib. 201; 160 ib. 151.

<sup>2</sup> 157 C. J. 432.

<sup>3</sup> 146 C. J. 178; 147 ib. 182.

<sup>4</sup> 150 C. J. 147; 160 ib. 248.

<sup>5</sup> For occasions on which such motions have been made without notice, see pp. 218, 229, n.

<sup>6</sup> 9 C. J. 560.

<sup>7</sup> Also, when the house has met at ten o'clock to receive a royal assent message, 355 H. D. 3 s. 323; 7 Parl. Deb. 4 s. 450. See also suspension of sitting 31st March, 1914, pursuant to resolution of the house, 169 C. J. 109. 112.

<sup>8</sup> 298 H. D. 3 s. 1532; 182 Parl. Deb. 4 s. 417; 65 H. C. Deb. 5 s. 1832.

<sup>9</sup> On the 17th Feb. 1866, the Lords sent a message to the Commons, request-

ing them to continue sitting for some time, to which the latter agreed, the object being to ensure the passing of the Habeas Corpus Suspension (Ireland) Bill on that day, 121 C. J. 88.

<sup>10</sup> Between the 2nd May, 1902, and Easter, 1906, there was a suspension of the sitting under standing order No. 1, from half-past seven o'clock till nine o'clock on Monday, Tuesday, Wednesday and Thursday, and on one occasion, the business appointed for an afternoon sitting being concluded before half-past seven o'clock, the Speaker in leaving the chair said that he would resume it if any formal business such as receiving a bill from the Lords had to be transacted, 116 Parl. Deb. 4 s. 1245. When the business appointed for an afternoon sitting had

Quorum  
of the  
house.

Forty members, including the Speaker, form the quorum of the house.<sup>1</sup> If the absence of a quorum be proved after four o'clock, except by a division between a quarter-past eight and a quarter-past nine o'clock (see p. 208), the immediate adjournment of the house takes place.<sup>2</sup>

Duty of  
the  
Speaker  
regarding  
quorum.

At the meeting of the house it is the duty of the Speaker to ascertain whether a quorum is present :<sup>3</sup> but when he has taken the chair, that

been completed before half-past seven o'clock, and there was not any government business appointed for the evening sitting, the Speaker pursuant to an order of the house that he should at the conclusion of government business each day adjourn the house without question put, thereupon adjourned the house till the following day, 157 C. J. 502, 115 Parl. Deb. 4 s. 908.

<sup>1</sup> 5th Jan. 1641, 2 C. J. 63. "Forty maketh a House of Commons," Gaudy's Notes of the Long Parliament, MSS. Brit. Mus. "Awhile we had a less number present (in the grand committee on subsidies) than forty, which we account, by the orders of the house, to be the least number present at a grand committee," D'Ewes, 5th June, 1641, Harleian MSS. From an entry, 20th April, 1607, it would appear that sixty was not then a sufficient number, 1 C. J. 364. A motion was made by Mr. Pierrepont, 18th March, 1801, during the first Parliament of the United Kingdom, "That Mr. Speaker do not take the chair until at least sixty members are present in the house : " but negatived, 35 Parl. Hist. 1203. This rule, which dates from the year 1640, is only one of usage, and may be altered at pleasure. The rule was suspended by order of the house, 1st March, 1793, 48 C. J. 305, for the purpose of receiving messages from the Lords relating to proceedings on the trial of Warren Hastings. Such messages were received when even one member only was present, 48 C. J. 305. 310. 660. 804. In 1833, it was determined that sittings of the house from twelve o'clock till three, for private business and petitions, might be held with only twenty members, 88 C. J. 95.

<sup>2</sup> First recorded count out, 22nd April, 1729, 21 C. J. 351. In all times, the proceedings of the house have been liable to interruptions from the engagements or recreations of members. Writing of the grave Long Parliament in 1641, Mr. Pal-

grave relates that "one day's 'discourse' was stopped because 'the Earl of Strafford came in his barge to the upper house from the Tower, and divers ran to the east windows of the house, who, with them that sat by, looked out at the said windows, and opened them ; and others quitted their seats with noise and tumult ; ' and another sitting was, in like manner, broken up, in the very crisis of national anxiety, because such members preferred 'the play-houses and bowling-alleys' to the committee of supply."—Death of the Earl of Strafford, in *Frascr's Magazine* for April, 1873, citing D'Ewes, Harleian MSS. I have myself seen the benches nearly deserted during a boat-race, which could be seen from the same east windows, before the great fire of 1834. In Dec. 1648, so many members were in prison, that sometimes there were not enough to make a house, and the Speaker was "obliged to send to the guards to bring in some of their prisoners to make up the number of 40 ; and when the jobb was done, to receive them again into custody," Carte, iv. 601.—*Author's note.*

<sup>3</sup> On Friday sittings the Speaker takes the chair although a quorum is not present, and the transaction of business is commenced when the house is made. If, as occasionally happens on a Friday morning, the commencement of business by the house is prevented for some time by the absence of a quorum, the Speaker can request the Serjeant to inform the members in the committee-rooms that the house is waiting to form a quorum. According to ancient usage, the Speaker used to send the Serjeant with the mace to desire the members attending select committees to attend to help to make a house ; and the committees were dissolved by the presence of the Serjeant with the mace.—(MS. Account of the office and duty of the Serjeant-at-arms attending the House of Commons.) 245 H. D. 3 s. 1500 ; 4 Parl. Deb. 4 s. 1181.

responsibility rests upon the house. Accordingly, the only occasion when the Speaker takes the initiative in this matter is immediately after prayers. At that moment, if the necessity should arise, the Speaker refrains from taking the chair and, standing in the place which the Clerk of the house occupies at the table, counts the house. The Speaker announces that the house is made by taking the chair, if he ascertains that forty members are present; but if that is not the case, presumably under the usage already mentioned (see p. 197), he waits, seated in the Clerk's chair, or retires from the house, either until a quorum is present, or until four o'clock, when, standing on the upper step of the chair, he again counts the house; and, if a quorum is not present when he has ceased counting, he adjourns the house, without question put, until the next day of sitting;<sup>1</sup> on a Saturday, therefore, he adjourns the house until Monday.<sup>2</sup>

After the house has been made, if notice be taken that forty members are not present, the Speaker directs strangers to withdraw; and members are summoned as if for a division. After the expiration of two minutes, the Speaker proceeds to count the house, the outer door being kept open throughout the proceeding.<sup>3</sup> As has been explained, if it be after four o'clock that the absence of a quorum is proved, the Speaker at once adjourns the house until the next sitting day;<sup>4</sup> but if it be before that hour, the sitting is suspended until four o'clock, unless the requisite number of members has previously appeared in the house.<sup>5</sup> At four o'clock the Speaker again counts the house, and if a quorum is not present, he adjourns the house without question put until the next sitting day.<sup>6</sup> The same course of action is followed if the report of the tellers of a division, taken at any time except between a quarter-past eight and a quarter-past nine o'clock, proves that a quorum is not present.<sup>7</sup> The Speaker has declined to count the house again, when he had recently satisfied himself regarding the presence of forty members.<sup>8</sup> Nor would he count the house after a question has been put from the chair, as the division will prove the number of members present.<sup>9</sup>

<sup>1</sup> 120 C. J. 188; 121 ib. 340; 131 ib. 207; 147 ib. 309.

<sup>2</sup> 78 C. J. 8.

<sup>3</sup> On the 10th June, 1874, complaint was made that members had been obstructed on their return to the house during a count. The Speaker said it was the duty of the Serjeant to keep free access to the house, and he believed that duty had been

properly discharged, 219 H. D. 3 s. 1304.

<sup>4</sup> 128 C. J. 321.

<sup>5</sup> 100 C. J. 721.

<sup>6</sup> 140 C. J. 39; 147 ib. 309; 154 ib. 214; 155 ib. 181; 158 ib. 37; 162 ib. 162; 165 ib. 314; 167 ib. 154.

<sup>7</sup> 132 C. J. 370; 137 ib. 420; 140 ib. 181.

<sup>8</sup> 235 H. D. 3 s. 1771; 311 ib. 620.

<sup>9</sup> 273 H. D. 3 s. 331.

Quorum  
in com-  
mittee of  
the whole  
house.

If notice be taken in committee of the whole house that forty members are not present, the chairman follows the course pursued by the Speaker in the house. If he ascertains that forty members are not present, he leaves the chair, the house is resumed, and, on his report, *the Speaker counts the house.*<sup>1</sup> If forty members be then present, *the house again resolves itself into the committee:* but if not, the Speaker either suspends the sitting until four o'clock, or adjourns the house forthwith.<sup>2</sup>

Absence  
of a  
quorum  
between  
8.15 and  
9.15 p.m.  
S. O. 55,  
Appendix  
I.

Message  
for atten-  
dance in  
House of  
Lords  
makes a  
house.

The house cannot be counted between a quarter-past eight and a quarter-past nine o'clock, but if on a division taken on any business during that time it appears that forty members are not present, the business must stand over until the next sitting and the next business must be taken.

A message from the sovereign or the lords commissioners for the attendance of the house in the House of Peers as, for example, for the purpose of giving the royal assent to bills, makes a house, without regard to the number present. Accordingly, when it is known that the attendance of the house in the House of Peers will be desired, the house meets at the time appointed,<sup>3</sup> and, if forty members are not present, the Speaker takes the chair of the Clerk of the house; and when the knock of Black Rod upon the outer door of the house is heard, the Speaker, although forty members are not present, takes the chair, receives the message delivered by Black Rod, and passes onward to the House of Peers. On his return the Speaker resumes the chair, makes his report to the house; and, as the house has been made, business may be proceeded with, until, on notice taken, it is proved that forty members are not present.

Notice  
paper of  
the house.

On the morning following a sitting of the house, the record of the transactions of the previous day, styled "The Votes and Proceedings" (see p. 185), is delivered at every member's residence, together with the notice paper of the house,<sup>4</sup> which contains the appointed

<sup>1</sup> 101 C. J. 407.

<sup>2</sup> 85 C. J. 60, &c.; 100 ib. 701; 155 ib. 315.

<sup>3</sup> If the commission is not appointed before four o'clock, the house may be counted out, 111 C. J. 232.

<sup>4</sup> This notice paper is reprinted and distributed for members' use at the commencement of each day's sitting. The differences permitted between this paper and that circulated in the morning are confined to formal alterations made by the authorities of the house and the cor-

rection of printer's errors. In the case of prolonged adjournments even, new matter cannot be inserted, and when for the convenience of members the Speaker allowed the appearance on the paper of some new clauses to be proposed by a member of the government to a bill on consideration, as amended, he pointed out that as notice of them was required they could not be moved, 163 Parl. Deb. 4 s. 61; 31 H. C. Deb. 5 s. 527; 74 ib. 1643. See also Donison, 101.

business for the next day of sitting, both private and public, together with the notices of motions, questions and amendments which were handed in at the table during the previous day, and any other papers directed to be circulated with the votes. On every Saturday during the session each member receives, in addition to the notice paper containing the appointed business for the following Monday, a notice paper which contains all the notices of motions and orders of the day, that are set down for the consideration of the house during the remainder of the session.<sup>1</sup>

When the house meets on ordinary occasions, daily prayers having been read (see p. 149), the private and public business of the house is taken in the appointed order: 1. Private business; 2. Public petitions; 3. Unopposed motions for returns; and such motions as may be taken either before the commencement, or at the close of public business (see p. 219); 4. Motions for leave of absence; 5. Giving notices of motions; 6. Questions to members; 7. Asking leave to move the adjournment of the house for the purpose of discussing a definite matter of urgent public importance under standing order No. 10; 8. Presentation of bills; 9. Motions at the commencement of public business; followed by the orders of the day and notices of motions, as set down on the notice paper for that day.

This business is suspended when necessary without question put at a quarter-past eight o'clock, to afford an opportunity for the discussion of: 1. A motion for the adjournment of the house under standing order No. 10, for which leave has been obtained after questions at that day's sitting; 2. Opposed private business set down by direction of the chairman of ways and means; and 3. Notices of motions and orders of the day of unofficial members on those days on which precedence is then given to them under standing order No. 4. After such business has been disposed of, the postponed business is resumed and the question which was under consideration when the business was suspended is again proposed from the chair.

Business is taken at a Friday or Saturday sitting in the same order as the business before a quarter-past eight o'clock on other days, except that motions, other than those relating to the business of the house, cannot be made at the commencement of public business,

Arrangement of business. S. O. 4, Appendix

Suspension of business at 8.15.

Arrangement of business on Friday and Saturday.

<sup>1</sup> The daily printing of this notice paper, commonly called the "Order Book," was begun in 1856, and its weekly circulation to members dates from February, 1865, 177 H. D. 3 s. 323. Until

2nd May, 1904, the order book circulated each Saturday included the following Monday's orders, &c., which are now issued as a separate paper.

or leave to move the adjournment of the house under standing order No. 10 be asked.

Private  
business.

So soon as prayers are concluded, the Speaker calls upon the Clerk at the table to read the titles of the private bills appointed for that day's sitting; and members rise to make the motions relating to private business of which they have given notice, according to the order in which the motions are arranged on the paper.

Notice  
paper of  
private  
business.

The notice paper, containing the orders of the day and notices of motions relating to private business and to provisional order bills, is prepared by the Committee and Private Bill Office, in pursuance of the provisions of standing order No. 8 and of standing orders (Private Business) Nos. 225 and 225a, and of the orders of the house, and under instructions received from the chairman of ways and means, and from the parliamentary agents. The private business is set down upon the paper in the following order: 1. Consideration of Lords' amendments; 2. Third readings; 3. Consideration of bills ordered to lie upon the table; 4. Second readings; 5. Notices of motions relating to private business other than stages of bills appointed for that day.

S. O. 225.  
(Private  
business).

S. O. 225a.  
(Private  
business).

S. O. 8,  
Appendix  
I.

Time for  
taking  
opposed  
private  
business.

These are followed by bills for confirming provisional orders and orders under the Private Legislation Procedure (Scotland) Act, 1899, arranged in the same order, and notices of the presentation of such bills. In all cases unopposed business is given precedence of opposed business.

All private business which is not disposed of by three o'clock is postponed, without question put, until such time as the chairman of ways and means may determine.<sup>1</sup> Such private business is taken at a quarter-past eight<sup>2</sup> after any motion for the adjournment of the

<sup>1</sup> This provision was ruled by the Speaker privately (9th August, 1905), to extend to notices of motions relating to private bills standing "by order" (see p. 211, n. 5), and not reached at the time after which time private business could not be taken. See Notices of Motions, Private Business (Sess. 1905), pp. 816, 817. Private business which has been opposed at the commencement of a sitting has been directed to be taken on the evening of the same day under S.O. 8 (3), 151 Parl. Deb. 4 s. 779; 165 C. J. 307; 168 C. J. 277, 55 H. C. Deb. 5 s. 1955. Unopposed private business not disposed of at the commencement of an afternoon sitting (see p. 198, n. 1) has been appointed for the evening sitting of the same day, 158 C. J. 20; 160

ib. 363.

<sup>2</sup> Opposed private business has been ordered to be taken immediately after government business, if that business should be disposed of before 8.15, 170 C. J. 40; 171 ib. 13, or at a Saturday sitting at the end of government business, 163 C. J. 512. It has also been ordered to be taken on the last two days allotted to the business of supply at the conclusion of that business instead of at 8.15, and was allowed to be proceeded with, though opposed, and was exempted from interruption under S.O. No. 1, 166 C. J. 403. A similar arrangement has been made to enable it to be taken at the end of government business, 169 C. J. 418, and at the end of the proceedings ordered to be



house under standing order No. 10 has been disposed of (see p. 226), *S. O. 8*, and is distributed as near as may be proportionately between the <sup>Appendix</sup> sittings on which government business has precedence and the other sittings, and is set down in such order as the chairman of ways and means directs.<sup>1</sup> Opposed private business other than that then under *S. O. 207*, consideration cannot be taken after half-past nine o'clock,<sup>2</sup> but is <sup>(Private business).</sup> postponed until the next sitting of the house, in order that the chairman of ways and means may appoint another day for its consideration. If when it is called on after half-past nine o'clock, such business proves to be unopposed, it can be taken, and a member has been allowed then to make an explanation.<sup>3</sup> No opposed private business may be set down for a quarter-past eight on Wednesdays between Easter and Whitsuntide, or for a Friday sitting.<sup>4</sup> If, upon its title being read, no motion relative to a private bill is made, the proceedings upon it are postponed till the next day on which the house sits. <sup>Private business, not moved.</sup>

Pursuant to standing order No. 207 (Private Business), if an order of the day, or a notice of motion placed upon the notice paper of private business, when read or called on for the first time, is met by an announcement, made by a member rising in his place, that it is opposed, the proceeding is deferred until a subsequent day,<sup>5</sup> and may again be deferred before that day is reached.<sup>6</sup> When the member who gave a notice of motion, which has been deferred on account of opposition, materially alters the form of such notice, the motion becomes subject to this rule; and, if objection be taken, the consideration of the altered motion is again postponed to a future day. On the other hand, when a notice of motion, which had been deferred on account of opposition, appeared the next sitting day upon the notice paper in the same form, but in the name of another member, an

<sup>Postponement of private business when opposed.</sup>

concluded at a certain time under an order of the house prescribing the method and times for bringing certain business to a conclusion, 161 C. J. 255.

<sup>1</sup> If a bill set down for a quarter-past eight is not reached owing to the adjournment of the house before that hour, it is set down at the time of private business at the next sitting of the house, Breeon and Merthyr Tydfil Junction Railway Bill, 169 C. J. 234. 246.

<sup>2</sup> On the 14th December, 1908, opposed private business set down by direction of the chairman of ways and means was exempted from this provision and from interruption under S. O. No. 1, 163 C. J. 496.

<sup>3</sup> 7 H. C. Deb. 5 s. 1119.

<sup>4</sup> Bills, the consideration of which has been postponed on a Thursday under standing order No. 207 (Private Business), are in practice, however, set down for the following day in order that the day selected by the chairman of ways and means for their consideration may be announced, if they are again opposed: 23rd and 24th July, 1903, 28th and 29th April, 1904.

<sup>5</sup> Private business so deferred is distinguished on the notice paper from other private business by the addition of the words "By order."

<sup>6</sup> 142 C. J. 286.

objection, that it was therefore a new notice, was overruled.<sup>1</sup> It is provided by the same standing order that a motion contingent on opposed private business that has been disposed of at a time appointed by the chairman of ways and means may be considered and disposed of at the same sitting with the consent of the chair.

Pro-  
visional  
order bills.

Motions and orders of the day relating to provisional order bills are, when opposed, dealt with by the house in conformity with the procedure which regulates the transaction of private business.

Presen-  
tation of  
public  
petitions.

When the private business taken at the commencement of a sitting is concluded, the Speaker calls on those members to present petitions who have intimated to him their desire to do so, or who have entered their names on a list headed "Public Petitions," which is placed on the table of the house. When all the names on the list have been called, any member may rise and present a petition in the interval between the close of private business and the commencement of public business (see p. 228) : <sup>2</sup> but not so as to interrupt the giving of notices, or the asking of questions.<sup>3</sup> Petitions which relate to a motion upon the notice paper or to an order of the day may be presented, however, when the mover of the motion is called on, or when an order of the day is read for the first time,<sup>4</sup> but not after the question consequent thereon has been proposed, or on resuming an adjourned debate.<sup>5</sup>

Petitions  
relating to  
an order  
of the  
day, &c.

Motions  
for un-  
opposed  
returns.

From the time when the presentation of petitions begins, until the commencement of public business, if the house be not otherwise engaged, motions may be made for returns of which notice stands upon the notice paper for the day, and which the government department concerned has signified its readiness to grant. A member may, if duly authorized, make such a motion in behalf of another member, in his absence. Before an unopposed return can be moved, the Speaker should be assured that the department which furnishes the return has notified its consent; and if an order for a return is obtained as unopposed, without such consent, the order may be struck out of the minute books by the Speaker's direction, or on a subsequent day the order may be read and discharged. If a motion

<sup>1</sup> Sutton Water Bill, 142 C. J. 181. 197; Birmingham Corporation Water Bill, Notices, Private Business, scss. 1892, pp. 259. 265, 147 C. J. 152, 3 Parl. Deb. 4 s. 535.

<sup>2</sup> 190 H. D. 3 s. 1893.

<sup>3</sup> Formerly the public presentation of petitions was not permitted after five

o'clock, but this restriction is rendered inoperative by standing order No. 4.

<sup>4</sup> 151 C. J. 85. 87.

<sup>5</sup> On one occasion the motion made upon an order of the day was temporarily withdrawn in order to enable a member to present a petition relating thereto, 111 C. J. 131.

for an unopposed return, made during the time before the commencement of public business, is opposed, though official consent may have been given, the motion must be deferred until, during the course of the day, notices of motions are called on in their regular order, but formal opposition either before the commencement of public business or after its interruption has been overruled by the Speaker,<sup>1</sup> who has also deprecated opposition to motions for returns which the government has signified its willingness to give.<sup>2</sup>

Motions for leave of absence, notice having been given (see p. 220), Leave of absence. may be moved before the commencement, or after the close, of public business.

By a practice dating from the beginning of last century, the terms Notices of motions. of a substantive motion, when moved in the House of Commons, should be stated, and printed on the notice paper of the house.<sup>3</sup> A substantive motion, as a rule, must be moved by the member in whose name the notice stands (see p. 218).

No notice of motion may be fixed for a day which lies beyond the Extent of notice. interval of time included within the "four days next following on S. O. 7, which notices have precedence; due allowance being made for any Appendix I. intervening adjournment of the house." Notices of motions have precedence over the orders of the day at a quarter-past eight o'clock on Tuesdays and Wednesdays before Easter and after Michaelmas, and on Wednesdays between Easter and Whitsuntide (see p. 230). Following this method of computation, no notice can be given before Easter for a day beyond the second Tuesday or Wednesday that occurs after the day on which the notice is given in the house, nor between Easter and Whitsuntide for a day beyond the fourth Wednesday so occurring. The "due allowance" in that calculation "for any intervening adjournment of the house," permitted by the standing order, is designed to meet the occasion of a lengthened adjournment of the house, such as the Easter adjournment. Under this provision, so soon as the motion for the Easter adjournment, for example, is agreed to, notice can be given for any Wednesday after Easter which is not beyond the fourth day upon which notices of

<sup>1</sup> 338 H. D. 3 s. 1232; 33 Parl. Deb. 4 s. 895; 53 ib. 466; 142. ib. 1038; 154 ib. 197; 5 H. C. Deb. 5 s. 1162.

<sup>2</sup> 142 Parl. Deb. 4 s. 1499. In refusing to accept an objection to a motion for an unopposed return, the Speaker has suggested that the member who objected should bring pressure upon the depart-

ment with a view to the order being rescinded, 77 H. C. Deb. 5 s. 588.

<sup>3</sup> 3rd and 27th Feb. 1806, Colchester, ii. 35. 41, 6 H. D. 1 s. 229; see also 12th March, 1836, 31 H. D. 3 s. 1154; 9th July, 1861, 164 H. D. 3 s. 630. For earlier cases, see 21 Parl. Hist. 147. 622. 885. 888.

motion have precedence upon which the house will sit, including in that calculation such Tuesdays and Wednesdays as occur before the adjournment and such Wednesdays as occur after the conclusion of the period of adjournment. Thus, for example, if it be intended, on the Thursday, to move the adjournment of the house until the Monday next after Easter Monday, a member cannot, on the preceding Tuesday or Wednesday, give notice for a day beyond the third or fourth Wednesday after Easter Day respectively: but so soon as the house has agreed, on Thursday, to adjourn, at its rising, over the next ten days, notices may be given for the four next notice days which occur after the adjournment.

**Manner of giving notice of a motion.**

Public notice may be given of an intended motion, if the time of the house be not otherwise engaged, after the consideration of private business is concluded, and before the commencement of public business, or subsequently, after the close of public business.<sup>1</sup> No debate is permitted when notice of an intended motion is given to the house.<sup>2</sup> Notices of motion may also be given at any time during the sitting of the house, by delivering the terms of the motion, in writing, at the table.<sup>3</sup>

**Notices on the first day of a session.**

Members of the government can claim priority in giving notice, whenever they make announcements relative to public business;<sup>4</sup>

<sup>1</sup> A notice orally given holds good for the day on which it is given and cannot be withdrawn. It must be supplemented by a written notice handed in at the table during the sitting, if it is to continue effective. A written notice becomes effective only when it appears on the notice paper on the day following that on which it was handed in at the table and continues effective as long as it remains on the paper, 13 Parl. Deb. 4 s. 1078; 40 H. C. Deb. 5 s. 980. 1151. A notice cannot be withdrawn from the notice paper of the day or the current issue of the order book in the course of a sitting, 4 Parl. Deb. 4 s. 190; 46 ib. 1347, but by an intimation to the clerks of the table it can be withdrawn from a future issue.

<sup>2</sup> On the 30th April, 1792, the Speaker allowed Mr. Grey to make a speech on giving notice of a motion on the subject of parliamentary representation, which was followed by a debate. He said to Mr. Pitt, "that in strictness it was not allowable, but that he considered it to be the spirit of his duty to consult the wishes

of the house," Sidmouth, i. 88. On the 5th July, 1872, a member, on rising to give a notice, proposed to raise a debate thereon, but was at once stopped by the Speaker, 212 H. D. 3 s. 698. See also 230 ib. 1135; 316 ib. 1222.

<sup>3</sup> On the 11th April, 1854 (the last day before the Easter recess), it was ordered "that members wishing to move amendments to the Oxford University Bill, do send them to the Clerk of the house on or before Monday, the 24th day of this instant April, and that the same be printed and circulated with the votes," 109 C. J. 193. In sessions 1914-16 and 1916 notices of amendments received by the clerks at the table by five o'clock on Friday or Monday when the house adjourned over Friday were ordered to be printed, 170 ib. 283; 171 ib. 13. A member may not keep the same notice on the notice paper for two days at the same time, Mr. Speaker's ruling (private), 5th April, 1895.

<sup>4</sup> On the 26th Feb. 1867, this privilege gave ministers a strategic advantage over

and on the first day of the session they give their notices after the usual sessional orders and resolutions have been agreed to <sup>1</sup> (see p. 162).

If a member desires to obtain precedence for a notice of motion, he enters his name on the ballot paper, which is, at the meeting of the house, placed in the "No" division lobby for that purpose. Notice may be given in behalf of a member at that moment absent from the house; and in that case, the member who gives the notice enters upon the paper the name of the member for whom he acts, answers for him when the name is called, and delivers at the table the written notice in his behalf, but he cannot then enter his own name on the ballot paper.<sup>2</sup> The name or signature of a member must not appear more than once upon the ballot paper.

Ballot for notices of motions.

When the house meets at a quarter to three o'clock, the ballot takes place after questions. At other sittings of the house the ballot is taken immediately after the close of private business, or, if no private business is set down for consideration, so soon after prayers as suits the convenience of the house.

Time of taking the ballot.

Numbers are assigned by the ballot paper to the names or signatures of the members intending to give a notice, and slips of paper bearing corresponding numbers are folded up and placed in the ballot box. When the Speaker has called on members to give their notices of motions, the clerk assistant, having shuffled the slips of paper, draws them out, one by one, and notifies to the house the number that has been drawn out. The Speaker therefore announces the name of the member to whose signature that number is attached upon the ballot paper; and, following the Speaker's call, each member, in his turn, rises and states the notice which he gives, and the day that he has chosen for the motion. In order to secure the precedence obtained by the ballot he must hand in a copy of his notice at the table on the same day before the rising of the house.<sup>3</sup> When the

Manner of taking the ballot.

their opponents. Mr. Gladstone desired to give notice of an amendment for the 28th, on going into committee to consider resolutions on the representation of the people: but before the ballot, he was anticipated by the chancellor of the exchequer, who rose and announced, with reference to public business, that he should not ask the house to proceed with that committee, 185 H. D. 3 s. 1021.

<sup>1</sup> 152 Parl. Deb. 4 s. 139. The ballot for private members' bills before 1894

was taken in the house on the first day of the session at half-past four o'clock, and members of the government gave their notices before the ballot.

<sup>2</sup> 68 H. D. 3 s. 1002; 92 Parl. Deb. 4 s. 589; 102 ib. 1271.

<sup>3</sup> 13 Parl. Deb. 4 s. 1078. When the written notice has been more limited in its scope than the oral notice, the former has been ruled to be the effective notice, 3 H. C. Deb. 5 s. 1164.

ballot paper has been called over, members whose names were thereon, and other members, may give further notices.

Ballot for bills and notices of motions at commencement of session.

The ballot to determine the precedence of the bills of unofficial members at the commencement of the session and of notices of motions for the first four notice days has been held out of the house since 1894.<sup>1</sup> Members desiring to take part in the ballot are required to sign the ballot paper on the first or second day of the session during the sitting of the house. The ballot is taken on the third day at a time and place fixed by the Speaker. The precedence obtained therein can be used for either a bill or a notice of motion. During the sitting of the house on the same day members must hand in at the table their notices of motions or the titles of the bills that they propose to present.<sup>2</sup> The notices of motions are arranged upon the notice paper for the available days, selected by members in the order determined by the ballot. On the fourth day of the session the bills are presented in the order of the ballot after questions, or if that day be a Friday as soon after prayers as may be convenient. The power of members in signing the ballot paper is restricted in the manner already described on p. 215.

Terms of notice of motion.

Notice of a motion may be given in the first instance in general terms, but in that case a notice of the motion, precisely as it is intended to be proposed,<sup>3</sup> should be delivered at the table some days before, or, at latest, during the sitting preceding the day appointed for the motion.<sup>4</sup> This practice applies to notices of amendments on going into committee of supply, which in this respect are treated as motions (see p. 475). In the case of charges affecting personal character or conduct, however, no form of notice is permitted, save a specific notice of a substantive motion, which distinctly formulates the charges (see p. 248).

Change of terms of notice of motion.

A modification of a notice of motion standing upon the notice paper is permitted, if the amended notice does not exceed the scope of the original notice.<sup>5</sup> If a motion is proposed, which differs

<sup>1</sup> 149 C. J. 9; 150 ib. 9; 158 ib. 9. In session 1914-16 and the following session this ballot was not taken as government business was given precedence throughout the session and no public bills other than government bills could be introduced, 170 C. J. 9. 40; 171 ib. 7. 37.

<sup>2</sup> A notice of the presentation of a bill

by an unofficial member handed in on the first or second day of a session is not printed, 68 H. C. Deb. 5 s. 39.

<sup>3</sup> 205 H. D. 3 s. 774.

<sup>4</sup> Vote of thanks for services in India, 8th Feb. 1858, 148 H. D. 3 s. 865.

<sup>5</sup> 171 Parl. Deb. 4 s. 680.

materially from the terms of the notice, it can only be made with the consent of the house, or upon a renewal of the notice.<sup>1</sup>

No positive rule has been laid down as to the time which should elapse between the notice and the motion:<sup>2</sup> but some interval is generally assigned to motions that may provoke debate. Notices of motions for leave to bring in bills, or for other matters to which probably no opposition will arise, are frequently given during the day before the sitting on which they are submitted to the house.

Should a member desire to change the day for which he first gave notice, he must defer the notice to a more distant day, it being irregular to fix an earlier day than that originally chosen;<sup>3</sup> nor can this rule be evaded by changing the motion into an amendment to another question.<sup>4</sup>

As the notice paper is published by authority of the house, a notice of a motion or of a question to be put to a member, containing unbecoming expressions, infringing its rules, or otherwise irregular, may, under the Speaker's authority, be corrected by the clerks at the table.<sup>5</sup> These alterations, if it be necessary, are submitted to the Speaker, or to the member who gave the notice. A notice wholly out of order, as, for instance, containing a reflection on a vote of the house,<sup>6</sup> may be withheld from publication on the notice paper,<sup>7</sup> or, if the irregularity be not extreme, the notice is printed, and reserved for future consideration; though, in such cases, it is not the duty of the clerks at the table to inform the member who gave the notice of an informality that it may contain.<sup>8</sup> When a notice, publicly given, is obviously irregular or unbecoming, the Speaker has interposed, and the notice has not been received in that form.<sup>9</sup> He has also directed that a notice of motion should not be printed, as being

Period of notice.

Change of day for a motion.

Irregular notices.

<sup>1</sup> 148 H. D. 3 s. 719; 161 ib. 854; 212 ib. 219; 132 C. J. 301; 33 Parl. Deb. 4 s. 961.

<sup>2</sup> 207 H. D. 3 s. 143.

<sup>3</sup> Mirror of Parl. 1835, p. 275; 122 H. D. 3 s. 959; 154 ib. 537.

<sup>4</sup> 21 H. D. 3 s. 225; 30 ib. 8.

<sup>5</sup> 188 H. D. 3 s. 1065; 206 ib. 468; 207 ib. 1881; 212 ib. 700; 223 ib. 607; 240 ib. 643; 253 ib. 1631; 263 ib. 1130; 265 ib. 879; 270 ib. 1409; 274 ib. 631; 158 Parl. Deb. 4 s. 1124, 1163.

<sup>6</sup> 329 H. D. 3 s. 158.

<sup>7</sup> 263 H. D. 3 s. 1012; 313 ib. 232; 55 Parl. Deb. 4 s. 770. The precedence to

which a notice if in order would have been entitled cannot be claimed for it when corrected on a subsequent day, 288 H. D. 3 s. 684.

<sup>8</sup> 3 Parl. Deb. 4 s. 964. Communication regarding an irregular notice or question is made to members if the pressure of business permits, 270 H. D. 3 s. 1409; 313 ib. 232; 77 Parl. Deb. 4 s. 770; 93 Parl. Deb. 4 s. 453; 149 ib. 557; 158 ib. 1163.

<sup>9</sup> 161 H. D. 3 s. 342; 192 ib. 711; 212 ib. 707; 239 ib. 669; 170 Parl. Deb. 4 s. 1451.

obviously designed merely to give annoyance.<sup>1</sup> If an objection be raised to a notice of motion upon the notice paper, the Speaker decides as to its regularity; and, if the objection be sustained, the notice is amended or withdrawn.<sup>2</sup> The house has also, by order, directed that a notice of motion be taken off the notice paper.<sup>3</sup>

Motion to be moved only by member giving notice.

Except in the case of an unopposed return, a motion for leave of absence, or a notice standing in the name of a member of the government, which may be moved by a colleague (see p. 234), no motion, or amendment which requires notice, can be moved by a member other than the member in whose name the notice stands.

Waiver of notice.

The house can waive the right of requiring notice for a substantive motion, if the motion is moved under the sanction of the chair and with the general concurrence of the house. Of this usage the following illustrations can be cited, taken from motions relating to public business. On the 6th May, 1836, the house, by general concurrence, resolved itself into the committee of ways and means to receive the financial statement of the session, although the order for that committee had not been appointed for that day.<sup>4</sup> Without previous notice motions have been made which provided for a Saturday sitting,<sup>5</sup> altered the time when the next sitting of the house was held, or regulated the adjournment of the house,<sup>6</sup> or gave precedence either to orders of the day or to notices of motions, such motions being made either at the close of the sitting prior to the day when the order would operate, or at the opening thereof.<sup>7</sup> So also, without previous notice, the standing order regulating a twelve o'clock sitting was read and suspended upon the previous day; and in like manner, at a morning sitting, held under standing orders since repealed, an order was made whereby priority was given to the consideration of a bill at nine o'clock, over the order of the day for the committee of supply.<sup>8</sup> A notice of motion which stood on the notice paper for the day's sitting, to be taken at nine o'clock, has been moved at the commencement of

<sup>1</sup> Notice of a return of the conviction of Mr. King-Harman for an assault, 21st Feb. 1888, Mr. Speaker's ruling.

<sup>2</sup> 228 H. D. 3 s. 1183; 250 ib. 1313; 267 ib. 388.

<sup>3</sup> 90 C. J. 435.

<sup>4</sup> 91 C. J. 330.

<sup>5</sup> 169 C. J. 435.

<sup>6</sup> 133 C. J. 355. 397; 146 ib. 410; 147 ib. 37; 164 ib. 106, 3 H. C. Deb. 5 s. 170.

<sup>7</sup> The resolution, 11th Feb. 1893,

that the Speaker should adjourn the house without question put, was moved without notice, as was also the resolution, 21st May, 1896, for the adjournment for the Whitsuntide recess, and that the Speaker should adjourn the house without question put.

<sup>8</sup> 107 C. J. 320; 135 ib. 33, 250 H. D. 3 s. 386; 147 C. J. 229.

<sup>9</sup> 120 C. J. 449; 122 ib. 365.



the two o'clock sitting ;<sup>1</sup> and, as is mentioned elsewhere (see p. 478), estimates have been considered in the committee of supply, without the customary notice.<sup>2</sup> A motion to give immediate effect to a resolution of the house has also been moved without notice ; for instance, when the house had rescinded and discharged the order for the appointment of a select committee, an order was made immediately for the reappointment of the committee with altered terms of reference.<sup>3</sup> A motion to rescind the committal of a bill to a standing committee has been made in like manner.<sup>4</sup> A message from the House of Lords declaring the expediency of the appointment of a joint committee has been considered without notice and a resolution for concurring with the Lords agreed to.<sup>5</sup> Motions for a new writ (see p. 573), or for the appointment of a committee, upon a future day, to consider a charge upon the public exchequer (see p. 457), are normally made without notice.

Certain formal motions<sup>6</sup> which are necessary for the due transaction of business are also made without notice, before the commencement, or after the close of public business, such as motions for the first reading of bills received from the House of Lords (see p. 352) ; for the consideration of Lords' amendments forthwith, or upon a future day (see p. 387) ; for the postponement, the discharge, or the revival of an order of the day (see p. 234) ; for the presentation of a new bill in lieu of a bill for which the order has been discharged (see p. 355) ; for returns or papers to be presented forthwith (see p. 565) ; for the reference of papers to a select committee (see p. 425), and for giving power to a select committee to hear counsel (see p. 435). On the presentation of a petition for the production of evidence in the possession of the house (see p. 527), unless objection be taken, a motion is made thereon to carry out the object of the petitioners.<sup>7</sup>

Motions arising out of a matter of privilege (see p. 241), or to appoint a committee on a matter of privilege (see p. 427), are also moved without notice.

Previous notice of certain motions is prescribed by the standing orders. Notice must be given of a motion for an addition to the days

Formal  
motions  
made  
without  
notice.

Motions of  
which  
notice is  
requisite.

<sup>1</sup> 226 H. D. 3 s. 94. 127 ; 133 C. J. 183.

<sup>2</sup> See also Mr. Ducane's motion, 156 H. D. 3 s. 1473.

<sup>3</sup> 125 C. J. 169, 201 H. D. 3 s. 79.

<sup>4</sup> Employers' Liability Bill, 4th May, 1893 ; Beer Bill, 26th July, 1901.

<sup>5</sup> 150 C. J. 127. 131 ; 166 ib. 27. 28,

21 H. C. Deb. 5 s. 1245.

<sup>6</sup> These motions are frequently handed in at the table and entered in the clerks' books as a matter of course, 82 Parl. Deb. 4 s. 1067 ; 61 H. C. Deb. 5 s. 1885.

<sup>7</sup> 270 H. D. 3 s. 805.

Under  
standing  
orders.  
See S. O.  
15. 31. 38.  
55. 57, and  
79, Ap-  
pendix I.

allotted to the business of supply (see p. 472); of the presentation of a bill without an order of the house (see p. 352); of new clauses on the report of a bill (see p. 380); of a motion or an amendment regarding the nomination of members for service on select committees, or for constituting a select committee of more than fifteen members, or for a proposed addition to a committee (see p. 426); and for the circulation of a petition with the notice paper of the house (see p. 560).

Under  
usage.

Pursuant to established usage, notice is requisite in the following cases, namely, a motion granting leave of absence to a member (see p. 213); to discharge a member from attendance on a select committee,<sup>1</sup> when not moved pursuant to the report of a committee (see p. 670); an amendment to the question for going into the committee of supply (see p. 474); an instruction to a committee, and an amendment which enlarges the scope of an instruction (see p. 367); and motions to rescind a resolution of the house, or to expunge or alter the form of an entry in "The Votes and Proceedings," except under certain conditions, as in the case of a privilege motion (see p. 268). Notice has invariably been given of motions for exempting business from the operation of standing order No. 1 (see p. 201), or for giving precedence to any business over supply on a Thursday (see p. 236).

Questions  
to mem-  
bers.

Notice of a question to a member is usually placed upon the notice paper,<sup>2</sup> unless the question relates to a matter of urgency or to the course of public business. The custom, formerly in vogue, of giving notice of questions by reading the question aloud, is no longer allowed, unless the consent of the Speaker in the case of any particular question has been previously obtained. Notice of a question is given by delivering the terms thereof in writing to the clerks at the table during the sitting of the house.<sup>3</sup> A member who desires an oral answer to his question must distinguish it by an asterisk, and the notice of any

S. O. 9,  
Appendix  
I.

<sup>1</sup> For restriction on motions affecting the service of members on select committees who have been nominated by the committee of selection, see p. 427.

<sup>2</sup> For the earliest known example of a question put in Parliament, see p. 196, n. 1. It was not until 1849 that a special place was assigned to questions on the notice paper. No example of a printed question exists before 27th Feb. and 25th March, 1835. The first occasion on which questions for an oral answer were dis-

tinguished on the notice paper from those for a printed answer was 5th May, 1902. The questions addressed to each minister for oral answer are grouped together, those to the leader of the house being placed last if that can be done consistently with their beginning not later than No. 45 on the list, 131 Parl. Deb. 4 s. 330; 132 ib. 642; 136 ib. 1265.

<sup>3</sup> A notice handed in without a member's name is not withheld from the notice paper, 177 Parl. Deb. 4 s. 104.

such question must appear at latest on the notice paper circulated on the day before that on which an answer is desired.<sup>1</sup>

Irregularities in a notice of a question are dealt with in the manner adopted regarding notices of motions (see p. 217), and are corrected at the table, or reserved for consideration.<sup>2</sup> The number of questions for oral answer which may be asked by a member on the same day is limited to eight,<sup>3</sup> and questions of excessive length have not been permitted.<sup>4</sup> The Speaker also has called the attention of the house to an alteration made by his direction in a question.<sup>5</sup>

No written or public notice of questions addressed to the Speaker is permissible; nor can any appeal be made to the chair by a question, save on points of order as they arise, or on a matter which urgently concerns the proceedings of the house.<sup>6</sup>

Questions addressed to ministers should relate to the public affairs with which they are officially connected, to proceedings pending in Parliament, or to any matter of administration for which the minister is responsible.<sup>7</sup> Within these lines an explanation can be sought

<sup>1</sup> This requirement was temporarily suspended by general consent for the latter part of session 1914, 66 H. C. Deb. 5 s. 50. In session 1914-16 the house ordered "That for the remainder of the session, whenever the house adjourns from Thursday to the following Tuesday, members desiring to give notice of questions for oral answer on a Tuesday or Wednesday may send notices of such questions to the clerks at the table, and any notices of questions so received by them before five of the clock on a Friday or Monday shall be accepted as notices of questions for oral answer on the following Tuesday or Wednesday, respectively, and be printed and circulated with the Votes," 170 C. J. 97, and in the following session a similar arrangement was made for cases of adjournments of the house from Thursday till the following Monday or Tuesday, 171 ib. 13.

<sup>2</sup> The Speaker's responsibility in regard to questions is limited to their compliance with the rules of the house. Responsibility in other respects rests with the member who proposes to ask the question, 252 H. D. 3 s. 1903; 267 ib. 1001; 72 H. C. Deb. 5 s. 1624; 75 ib. 1298; 77 ib. 454; 87 ib. 26; 88 ib. 450. A notice of a question asking for a return and setting out its details is put upon the paper as a

notice of motion for a return, 89 Parl. Deb. 4 s. 988. For instances where the Speaker has stopped a member asking by private notice a question that had been refused at the table, or asking the parts of questions struck out at the table, see 265 H. D. 3 s. 879; 274 ib. 632; 47 Parl. Deb. 4 s. 1184; 55 ib. 770; 82 ib. 432; 98 ib. 865; 160 ib. 872; 176 ib. 459. The refusal of a question at the table cannot be made the subject of debate, 127 Parl. Deb. 4 s. 711.

<sup>3</sup> 1 H. C. Deb. 5 s. 1108; 22 ib. 1394; 74 ib. 1185. If more than eight questions appear on the paper, the excess is carried over to the next day, 74 ib. 1185, 1197, 1297.

<sup>4</sup> 318 H. D. 3 s. 43.

<sup>5</sup> 161 H. D. 3 s. 342.

<sup>6</sup> 155 H. D. 3 s. 870; 198 ib. 368; 261 ib. 695; 271 ib. 1264, 1622; 286 ib. 616; 91 Parl. Deb. 4 s. 103, 256.

<sup>7</sup> Questions have been held to be irregular because the information sought could be obtained from ordinary sources, and did not come within the official knowledge or duties of the minister, 39 Parl. Deb. 4 s. 1156; 90 ib. 207; 93 ib. 51; and because they related to the internal affairs of a friendly state, 190 Parl. Deb. 4 s. 61; 30 H. C. Deb. 5 s. 1283; or to matters within the jurisdiction of the chairman of a select committee or the authorities of the house, 46 Parl. Deb. 4 s. 784; 47 ib. 1314.

regarding the intentions of the government, but not an expression of their opinion upon matters of policy.<sup>1</sup> An answer to a question cannot be insisted upon, if the answer be refused by a minister on the ground of the public interest ;<sup>2</sup> nor can the question be replaced upon the notice paper.<sup>3</sup> The refusal of a minister to answer a question on this ground cannot be raised as a matter of privilege<sup>4</sup> while a motion for the adjournment of the house under standing order No. 10 (see p. 226) to discuss a similar refusal has been ruled out of order.<sup>5</sup> Questions may be asked of the ministers who are the confidential advisers of the Crown, regarding matters relating to those public duties for which the sovereign is responsible :<sup>6</sup> but no question can be put which brings the name of the sovereign or the influence of the Crown directly before Parliament, or which casts reflections upon the sovereign.<sup>7</sup>

Questions  
to un-  
official  
members.

Questions addressed to unofficial members must relate to a bill, motion or other matter connected with the business of the house in which such members are concerned ;<sup>8</sup> though a question addressed to a member, the leader of the opposition, inquiring the course he intended to adopt regarding a motion by the government, was not allowed.<sup>9</sup> A question to an ex-minister with regard to transactions

<sup>1</sup> 102 H. D. 3 s. 1100 ; 155 ib. 1345 ; 166 ib. 2027 ; 203 ib. 242 ; 204 ib. 1764 ; 247 ib. 430. The Speaker has refused to allow questions as to whether the government proposed to put a clause by resolution to a stage of a bill, 15 Parl. Deb. 4 s. 1782 ; and as to the time at which a minister would move the closure, 89 ib. 1061 ; 141 ib. 781. A question as to the reasons of a minister for placing a motion upon the paper for the exemption of certain business from interruption under standing order No. 1 was not allowed as it would anticipate a motion which must be decided without debate, 93 ib. 1196.

<sup>2</sup> 209 H. D. 3 s. 466 ; 283 ib. 1350 ; 47 Parl. Deb. 4 s. 60 ; 178 ib. 529 ; 2 H. C. Deb. 5 s. 200 ; 73 ib. 1488.

<sup>3</sup> 285 H. D. 3 s. 875 ; 55 Parl. Deb. 4 s. 770.

<sup>4</sup> 89 Parl. Deb. 4 s. 322.

<sup>5</sup> 2 H. C. Deb. 5 s. 200.

<sup>6</sup> It has been ruled that the prime minister cannot be interrogated with regard to the advice that he may have given to the sovereign with regard to the grant of honours, 178 Parl. Deb. 4 s. 61 ; 190 ib. 1338.

<sup>7</sup> 192 H. D. 3 s. 711 ; 318 ib. 1373 ; 39 Parl. Deb. 4 s. 1378. A question relating to the Government of Ireland Bill was altered by the Speaker's direction on the ground that the name of the sovereign should not be introduced to affect the views of the house. See Notices of Motions, sess. 1912-13, pp. 3891, 3944.

<sup>8</sup> 174 H. D. 3 s. 1914 ; 192 ib. 717 ; 79 Parl. Deb. 4 s. 782 ; 99 ib. 593, 598 ; 136 ib. 1013 ; 142 ib. 1383 ; 54 H. C. Deb. 5 s. 527. The former usage by which questions were addressed to members who were placed on royal commissions, or were trustees of the British Museum, if relevant to their official duties or position, is not in accordance with modern practice, 88 H. C. Deb. 5 s. 35. This usage, which formerly included members of the Metropolitan Board of Works, was not extended to members of the London County Council, 334 H. D. 3 s. 712. Questions were not allowed by the Speaker to be put to the Chairman of the Road Board, when he was a member of the house, but were addressed to the Secretary of the Treasury, 22 H. C. Deb. 5 s. 1200.

<sup>9</sup> 253 H. D. 3 s. 974.

during his term of office has been ruled out of order.<sup>1</sup> Although questions may not be asked regarding statements made by members outside the house,<sup>2</sup> a question to an unofficial member has been permitted regarding a circumstance alleged to have happened outside Parliament, because it impugned the veracity of a member in respect to a statement made by him in the house.<sup>3</sup>

The purpose of a question is to obtain information, and not to supply it to the house.<sup>4</sup> A question may not contain statements of facts, unless they be necessary to make the question intelligible, and can be authenticated :<sup>5</sup> nor should a question contain arguments, expressions of opinion, inferences, or imputations.<sup>6</sup> Quotations are not permitted in questions,<sup>7</sup> or epithets, or controversial or ironical expressions.<sup>8</sup> Nor may a question refer to debates, or answers to questions in the current session.<sup>9</sup> Discussion in anticipation upon an order of the day or other matter, by means of a question, is not permitted ;<sup>10</sup> nor can a question be asked regarding proceedings in a committee which have not been placed before the house by a report from the committee.<sup>11</sup> A question which publishes the names of persons or statements not strictly necessary to render the question intelligible will be refused a place on the notice paper.<sup>12</sup> The expression of an opinion<sup>13</sup> or the solution of an abstract legal case,<sup>14</sup> or of a hypothetical proposition,<sup>15</sup> cannot be sought for by a question. Nor is it in order to ask merely whether certain things, such as statements made in a newspaper, are true : but attention may be drawn to such statements, if the member, who puts the question, makes himself responsible for their accuracy.<sup>16</sup> No question can be asked

Rules of order regarding questions.

<sup>1</sup> 158 Parl. Deb. 4 s. 217.

<sup>2</sup> 209 H. D. 3 s. 141 ; 228 ib. 1758 ; 268 ib. 556 ; 318 ib. 1382 ; 12 H. C. Deb. 5 s. 1181 ; 62 ib. 1270.

<sup>3</sup> 313 H. D. 3 s. 1249.

<sup>4</sup> 9 Parl. Deb. 4 s. 1620 ; 190 ib. 61.

<sup>5</sup> 270 H. D. 3 s. 1132.

<sup>6</sup> 175 H. D. 3 s. 100 ; 188 ib. 1065 ; 203 ib. 242 ; 208 ib. 781. 783. 842 ; 210 ib. 1088 ; 212 ib. 298. 700 ; 240 ib. 651 ; 265 ib. 879 ; 313 ib. 232.

<sup>7</sup> 172 Parl. Deb. 4 s. 225 ; 177 ib. 116 ; 186 ib. 1209 ; 188 ib. 256 ; 74 H. C. Deb. 5 s. 1297.

<sup>8</sup> 160 H. D. 3 s. 1827 ; 263 ib. 1012 ; 270 ib. 1409 ; 276 ib. 1905 ; 16 Parl. Deb. 4 s. 968 ; 48 ib. 285 ; 87 H. C. Deb. 5 s. 215.

<sup>9</sup> 207 H. D. 3 s. 1883 ; 276 ib. 1905 ; 82 Parl. Deb. 4 s. 12 ; 139 ib. 266. On one occasion a member has been allowed

to ask a minister for the reference to a statement made by him in debate, 15 ib. 1774. The Speaker has drawn attention to the inconvenience of questions relating to statements made in the House of Lords. 164 Parl. Deb. 4 s. 334, and disrespectful phrases with regard to the action of that house have been ruled out of order, 167 ib. 1863.

<sup>10</sup> 228 H. D. 3 s. 1557. 1766 ; 40 Parl. Deb. 4 s. 1152.

<sup>11</sup> 280 H. D. 3 s. 1147.

<sup>12</sup> 253 H. D. 3 s. 1631 ; 46 H. C. Deb. 5 s. 1005.

<sup>13</sup> 73 H. C. Deb. 5 s. 14.

<sup>14</sup> 47 Parl. Deb. 4 s. 1184 ; 89 ib. 1056 ; 143 ib. 36.

<sup>15</sup> 63 Parl. Deb. 4 s. 705 ; 60 H. C. Deb. 5 s. 25.

<sup>16</sup> 270 H. D. 3 s. 1132 ; 302 ib. 422 ; 10

which reflects on the character or conduct of those persons whose conduct, as stated on p. 248, can only be dealt with on a substantive motion; <sup>1</sup> and for the same reason, a question is not permitted, which makes or implies charges of a personal character.<sup>2</sup> Nor can any question be asked regarding character or conduct except of persons in their official or public capacity. A question also which might prejudice a pending trial should not be asked.<sup>3</sup>

Manner of  
asking  
questions.

After private business has been disposed of, and not later than three o'clock <sup>4</sup> on Mondays, Tuesdays, Wednesdays and Thursdays,<sup>5</sup> the Speaker calls on the members who have given notices of questions to which oral answers are desired, but no questions can be taken after a quarter to four o'clock,<sup>6</sup> except questions which have not been answered in consequence of the absence of the minister to whom they are addressed,<sup>7</sup> and questions which have not appeared on the paper, but which are of an urgent character and relate either to matters of public importance or to the arrangement of business.<sup>8</sup> As each

Parl. Deb. 4 s. 674; 42 ib. 1630; 47 ib. 1310; 95 ib. 431; 98 ib. 582; 137 ib. 1203; 75 H. C. Deb. 5 s. 330; 82 ib. 1804.

<sup>1</sup> 210 H. D. 3 s. 39; 213 ib. 554; 157 Parl. Deb. 4 s. 487; 172 ib. 775; 55 H. C. Deb. 5 s. 2024. 2057; 73 ib. 2459. A question for the 4th Dec. 1893, reflecting on the action in court of the Judicial Commissioner of the Irish Land Commission, and a question for the 11th May, 1899, relating to the action of a judge of the High Court were, by the Speaker's direction, not asked. A question relating to the action of a county court judge has also been refused, 184 Parl. Deb. 4 s. 831. The Speaker has ruled that a question relating to communications alleged to have passed between a member and a minister ought not to have appeared upon the notice paper, 40 Parl. Deb. 4 s. 1561; while a question upon the notice paper for the 23rd June, 1904, referring to the time occupied by two members' speeches, in deference to the Speaker's views, was not asked. A question relating to the action of the Governor-General of South Africa was removed from the notice paper by the Speaker's directions, Notices of Motions, sess. 1913, p. 815. The Speaker has ruled privately that questions relating to a sentence passed by a judge,

and to the circumstances under which rules of court were made and issued by the lord chancellor were inadmissible.

<sup>2</sup> 209 H. D. 3 s. 1761, 210 ib. 35-39; 310 ib. 763; 152 Parl. Deb. 4 s. 1142; 160 ib. 887; 46 H. C. Deb. 5 s. 1005; 84 ib. 526.

<sup>3</sup> 96 Parl. Deb. 4 s. 1365; 167 ib. 148; 177 ib. 1614.

<sup>4</sup> If, owing to a Royal Commission, the commencement of questions is delayed, they are taken as soon as possible after the Speaker's return, 109 Parl. Deb. 4 s. 1358.

<sup>5</sup> On Fridays and Saturdays questions to which an oral answer is desired may be asked, but it is not usual to put them down for those days, 91 Parl. Deb. 4 s. 994. 995. 1440; 196 ib. 727.

<sup>6</sup> Extended till four o'clock for the remainder of the session, 25th October, 1916, 171 C. J. 218. The rule was waived by general consent, 27th August, 1914, 66 H. C. Deb. 5 s. 166.

<sup>7</sup> A question not answered, when called a second time, on account of a minister's absence may be put down for a subsequent day, 110 Parl. Deb. 4 s. 701.

<sup>8</sup> A question upon the paper which was not reached by a quarter to four o'clock has been allowed to be asked, as it was urgent and related to an order of the day, 188 Parl. Deb. 4 s. 738.

member is called, he rises to ask the question,<sup>1</sup> or another member may do so at his request; and, without such request, a question should not be asked by a member who has not given notice of the question;<sup>2</sup> although in case the member responsible for a question does not answer to the Speaker's call, a minister may rise and make such statement upon the question as the public interest demands.<sup>3</sup> In like manner, a member, other than the member in whose name a question stands, which contains allegations affecting personal character or conduct, and requires therefore prompt reply, may ask for an answer to the question,<sup>4</sup> or a statement may be made thereon, although the question is not asked.<sup>5</sup> Sometimes replies have been given to questions addressed to ministers on a previous day, without a repetition of the question.

If a member does not distinguish his question by an asterisk, or if he or any other member deputed by him is not present to ask it, or if it is not reached by a quarter to four o'clock, the minister to whom it is addressed causes an answer to be printed in the official report of the Parliamentary Debates,<sup>6</sup> unless the member has signified his desire to postpone the question before the interruption of questions at a quarter to four o'clock.<sup>7</sup>

An answer should be confined to the points contained in the question, with such explanation only as renders the answer intelligible, though a certain latitude is permitted to ministers of the Crown;<sup>8</sup> and further questions, without debate or comment, may, within due

<sup>1</sup> In 1880, the practice of reading questions was discontinued, and the usage was established that members should ask their questions by referring to the number they bear upon the notice paper, 253 H. D. 3 s. 1920; 255 ib. 311.

<sup>2</sup> 279 H. D. 3 s. 1756; 178 Parl. Deb. 4 s. 57; 62 H. C. Deb. 5 s. 2143; 72 ib. 1176.

<sup>3</sup> 84 Parl. Deb. 4 s. 286. When a member stated that it was not his intention to ask a question standing in his name, as the subject of it had been discussed in debate on a previous day, the Speaker refused to allow the minister to whom the question was addressed to answer it, 17 H. C. Deb. 5 s. 20.

<sup>4</sup> 304 H. D. 3 s. 437.

<sup>5</sup> 72 H. C. Deb. 5 s. 1624.

<sup>6</sup> Printing in the official report of debates was substituted for printing and

circulation with the votes by an amendment of S. O. No. 9 on the 28th September, 1915, 170 C. J. 246. Until that date the answers had been printed in the official report of debates since its institution in 1909 as well as circulated with the votes.

<sup>7</sup> If a member having placed notices of questions upon the paper ceases to be a member of the house, answers to his questions should not be printed, 42 H. C. Deb. 5 s. 2552. The motion for the adjournment of the house at the conclusion of business cannot be used for the purpose of asking a question not reached by a quarter to four o'clock, 143 Parl. Deb. 4 s. 1310.

<sup>8</sup> 161 H. D. 3 s. 497; 174 ib. 1423; 209 ib. 466; 210 ib. 153. 596; 240 ib. 1617; 241 ib. 964; 90 Parl. Deb. 4 s. 88; 195 ib. 262.

limits, be addressed to them, which are necessary for the elucidation of the answers that they have given.<sup>1</sup> The Speaker has called the attention of the house to the inconvenience that arises from an excessive demand for further replies,<sup>2</sup> and, to hinder the practice, he has occasionally felt it necessary to call upon the member in whose name the next question stands upon the notice paper, to put his question.<sup>3</sup> A question fully answered, whether orally or in print, cannot be renewed,<sup>4</sup> nor can a question which one minister has refused to answer be addressed to another minister.<sup>5</sup>

Motions  
for the ad-  
journment  
of the  
house  
before the  
com-  
mence-  
ment of  
public  
business.  
S. O. 10.  
Appendix  
I.

According to past usage, it was in the power of two members to move and second a motion for the adjournment of the house, either whilst questions to members were being asked, or at any moment before the commencement of public business, and to raise thereon a general debate. Experience impressed upon the house the necessity of placing upon that power some restrictions.<sup>6</sup> Accordingly, in 1882 a standing order was passed, which was amended in 1902 and 1906, upon which the following procedure and practice have been founded. A motion for the adjournment of the house for the purpose of discussing a definite matter of urgent public importance may only be made when all the questions to members asked on Monday, Tuesday, Wednesday and Thursday have been disposed of, and before the commencement of public business. The member who desires to make such motion, rises in his place and asks leave to move the adjournment of the house. A notice in writing of the definite matter of urgent public importance which he proposes to discuss must be supplied to the Speaker.<sup>7</sup> If the leave of the house be unanimously given, or if, when the Speaker desires those members who support the motion to rise in their places, forty or more members rise accordingly, the motion stands over till a quarter-past eight of the same day, when it has precedence of all

<sup>1</sup> 211 H. D. 3 s. 1994; 212 ib. 298. 1624; 91 Parl. Deb. 4 s. 103; 188 ib. 257; 73 H. C. Deb. 5 s. 41. Questions which are asked without appearing on the paper are governed by the same rules of order as questions of which notice has been given, 3 Parl. Deb. 4 s. 861; 172 ib. 225; 82 H. C. Deb. 5 s. 931. A supplementary question in the house cannot be based upon a printed answer, 108 Parl. Deb. 4 s. 372.

<sup>2</sup> 290 H. D. 3 s. 686; 303 ib. 1503; 320 ib. 279. 1360; 323 ib. 374; 5 Parl. Deb. 4 s. 551; 96 ib. 264; 146 ib. 936; 151 ib. 634; 156 ib. 710; 167 ib. 369;

175 ib. 1427; 185 ib. 1745; 191 ib. 76. 95; 21 H. C. Deb. 5 s. 863; 60 ib. 532. 534. 557; 72 ib. 1621.

<sup>3</sup> 323 H. D. 3 s. 374; 142 Parl. Deb. 4 s. 937; 6 H. C. Deb. 5 s. 17; 25 ib. 428.

<sup>4</sup> 225 H. D. 3 s. 792. 952. 1142; 235 ib. 1797; 285 ib. 877; 293 ib. 904; 299 ib. 1401; 313 ib. 334; 109 Parl. Deb. 4 s. 1397; 144 ib. 472.

<sup>5</sup> 34 Parl. Deb. 4 s. 1547.

<sup>6</sup> 233 H. D. 3 s. 978; 234 ib. 33. 1301; 237 ib. 1539; 238 ib. 1951; 241 ib. 130; 247 ib. 697.

<sup>7</sup> 275 H. D. 3 s. 407.



other business.<sup>1</sup> If, however, fewer than forty members, and not less than ten have so risen, the member may, if he thinks fit, demand a division, upon question put forthwith, to determine whether such motion may be made.<sup>2</sup>

A motion under standing order No. 10 must be restricted to a single specific matter of recent occurrence;<sup>3</sup> and, as the matter to be discussed must be of an urgent nature, no notice should be given of an intention to resort to the motion on a future occasion.<sup>4</sup> If a matter submitted to the house in pursuance of this standing order fails to obtain the requisite support, it cannot, during the same session, be again brought forward in the same manner; nor can more than one motion for adjournment be made during the same sitting of the house.<sup>5</sup> Though the responsibility of bringing forward a subject as a definite matter of urgent public importance rests with the member who desires to exercise the right given by the standing order, there must be a *prima facie* case of urgency.<sup>6</sup> The Speaker declines to submit a motion for adjournment to the house if, in his opinion, the subject to be brought forward is not definite,<sup>7</sup> urgent,<sup>8</sup> or of public importance.<sup>9</sup> Motions for adjournment regarding matters for the discussion of which the committee of supply or other appointed business would afford an early opportunity have been ruled to be out of order.<sup>10</sup> Motions have also been ruled out of order when it appeared that the administrative responsibility of the government was not involved,<sup>11</sup>

<sup>1</sup> On 10th May, 1916, a motion for the adjournment of the house for which leave had been obtained was not moved as the government agreed to afford facilities for a motion on the same subject on the following day, 171 C. J. 77. 78, 82 H. C. Deb. 5 s. 631. 673. 694. 760; see also 171 C. J. 215. 257, 86 H. C. Deb. 5 s. 958, 88 ib. 1573.

<sup>2</sup> 275 H. D. 3 s. 409; 148 C. J. 349. 599, 13 Parl. Deb. 4 s. 907; 157 C. J. 233; 167 ib. 225. Such a division cannot be treated under standing order No. 30 as one frivolously claimed, 13 Parl. Deb. 4 s. 908.

<sup>3</sup> 312 H. D. 3 s. 1196; 320 ib. 751; 324 ib. 1068; 325 ib. 347. See also the Speaker's remarks upon the scope of such motions, 23 Parl. Deb. 4 s. 367; 110 ib. 602; and of debate thereon, 179 ib. 1636.

<sup>4</sup> 22nd Jan. 1891, Speaker's ruling.

<sup>5</sup> Speaker's ruling (private), 10th April, 1891; 11 Parl. Deb. 4 s. 459.

<sup>6</sup> 274 H. D. 3 s. 1447; 10 Parl. Deb. 4 s. 915; 30 ib. 1285; 81 ib. 1427; 90 ib.

1604; 54 H. C. Deb. 5 s. 1883.

<sup>7</sup> 33 Parl. Deb. 4 s. 1614; 96 ib. 444; 149 ib. 411; 189 ib. 1120; 18 H. C. Deb. 5 s. 840; 24 ib. 1602; 30 ib. 1284; 39 ib. 1856; 55 ib. 1721; 64 ib. 1718.

<sup>8</sup> 93 Parl. Deb. 4 s. 463; 113 ib. 633; 135 ib. 807; 138 ib. 788; 146 ib. 59. 497; 149 ib. 389; 150 ib. 939; 189 ib. 1120; 1 H. C. Deb. 5 s. 1593; 6 ib. 1135; 7 ib. 234; 12 ib. 135; 15 ib. 960; 23 ib. 1813. 2434; 25 ib. 1848; 37 ib. 2066; 55 ib. 242; 64 ib. 1718.

<sup>9</sup> 54 H. C. Deb. 5 s. 1246.

<sup>10</sup> 337 H. D. 3 s. 899; 339 ib. 1669; 17 Parl. Deb. 4 s. 1579; 86 ib. 93; 91 ib. 1125; 92 ib. 1093; 132 ib. 859; 135 ib. 807; 136 ib. 706; 150 ib. 924; 153 ib. 941; 189 ib. 965; 4 H. C. Deb. 5 s. 1213; 5 ib. 237; 15 ib. 960; 21 ib. 698; 28 ib. 1285; 86 ib. 768.

<sup>11</sup> 114 Parl. Deb. 4 s. 603; 150 ib. 1183; 173 ib. 1084; 41 H. C. Deb. 5 s. 816; 55 ib. 39. 242.

or that there had not been any departure from the ordinary administration of the law.<sup>1</sup>

Debate  
thereon.

The Speaker is bound to apply to these motions the established rules of debate,<sup>2</sup> and to enforce the principle that subjects excluded by those rules cannot be brought forward thereon; such as a matter under adjudication by a court of law, or matters already discussed during the current session, whether upon a previous motion for adjournment, upon a substantive motion, upon an amendment, or upon an order of the day.<sup>3</sup> Equally, on a motion for adjournment, discussion cannot be raised of any matter already appointed for consideration, or of which notice has been given; <sup>4</sup> or which a member has announced during question time his intention of raising on the motion for the adjournment of the house at the close of the sitting.<sup>5</sup> Matters arising out of the debates of the same session, or the terms of a bill before the House of Lords,<sup>6</sup> matters of privilege or order,<sup>7</sup> or matters debatable only upon a substantive motion (see p. 248), cannot be submitted to the house under this standing order.

Motions  
for ad-  
journment  
moved by  
a minister  
before  
com-  
mence-  
ment of  
public  
business,  
etc.

The provisions of standing order No. 10, which prescribe that a motion for the adjournment of the house cannot be made until the questions to members set down for the sitting are disposed of, and that such a motion, if leave be given to make it, shall stand over until a quarter-past eight o'clock, do not preclude a motion for the immediate adjournment of the house made by a minister of the Crown, at any time before the commencement of public business.<sup>8</sup> Such a motion can be made also by a minister of the Crown alone after motions at the commencement of public business have been disposed of and before the Clerk has been called upon to read the orders of the day.<sup>9</sup>

Com-  
mence-  
ment of  
public  
business.

Public business commences when the Speaker has called the first member who has given notice to present a bill, or to make a motion at the commencement of public business, or upon the member in charge of the first motion standing at the head of the orders of the

<sup>1</sup> 194 Parl. Deb. 4 s. 170; 8 H. C. Deb. 5 s. 523; 39 ib. 1856.

<sup>2</sup> 275 H. D. 3 s. 26; 310 ib. 1777; 337 ib. 899; 85 Parl. Deb. 4 s. 976; 91 ib. 912.

<sup>3</sup> 337 H. D. 3 s. 1697; 86 Parl. Deb. 4 s. 222; 2 H. C. Deb. 5 s. 200; 5 ib. 237.

<sup>4</sup> 275 H. D. 3 s. 26; 310 ib. 1777; 328 ib. 1411. 1417; 337 ib. 899; 345 ib. 738; 4 Parl. Deb. 4 s. 189; 17 ib. 1579; 41 ib. 522; 81 ib. 680; 122 ib. 1648; 134 ib. 1186; 171 ib. 1524; 189 ib. 1119. For

the limitation placed on this rule by standing order 10A, see p. 249.

<sup>5</sup> 40 H. C. Deb. 5 s. 979. 1151.

<sup>6</sup> Newfoundland Fisheries Bill, sess. 1891, Speaker's ruling (private).

<sup>7</sup> 154 H. D. 3 s. 445; 90 Parl. Deb. 4 s. 702.

<sup>8</sup> 140 C. J. 39, 294 H. D. 3 s. 843; 153 C. J. 213; 160 C. J. 349, 150 Parl. Deb. 4 s. 70; 170 C. J. 273. 296; 171 ib. 68. 70. 147.

<sup>9</sup> 169 C. J. 94; 170 ib. 281; 171 ib. 163.

day, or upon the Clerk to read the orders of the day. Consequently after the Speaker's call, no motion can be made for the adjournment of the house under standing order No. 10 ; nor, until the business set down for that sitting is concluded, can a notice be given, nor, save with the indulgence of the house, can a question be asked.

After the notices of presentations of bills under standing order No. 31 (2) (see p. 352) notices of motions at the commencement of public business are placed upon the paper in the following order. Motions relating to the business of the house, which must stand in the name of a minister of the Crown,<sup>1</sup> are placed first, and a motion for a vote of thanks, when moved by a minister of the Crown,<sup>2</sup> is placed among these motions.<sup>3</sup> These motions may also be placed at the head of the orders of the day, and, if so placed, have precedence over any bill or other matter to which the house, by order, has given precedence over all the other orders of the day and notices of motions.<sup>4</sup>

Motions at the commencement of public business. Motions relating to the transaction of business.

Motions for leave to bring in bills and for the nomination of select committees,<sup>5</sup> may be set down at the commencement of public business after the foregoing motions, on Mondays, Tuesdays, Wednesdays and Thursdays by members of the government,<sup>6</sup> and on Tuesdays and Wednesdays by unofficial members. When such motions are opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who moves,<sup>7</sup> and from a member who opposes the motion,<sup>8</sup> puts the question thereon

Motions for leave to bring in bills, and for nomination of select committees. S. O. 11, Appendix I.

<sup>1</sup> 279 H. D. 3 s. 419. The motion for the adjournment of the house over the Derby day when moved by an unofficial member was by custom set down at the commencement of public business, 240 H. D. 3 s. 1076. 1171 ; 306 ib. 34 ; 136 C. J. 276, &c. See also Mr. Bentinck's motion, notice paper, 13th July, 1871.

<sup>2</sup> 288 H. D. 3 s. 434.

<sup>3</sup> 113 C. J. 35 ; 134 ib. 397. Although, as a rule, previous notice is given of motions relating to the business of the house, previous notice is not essential in the case of motions for the adjournment of the house over Christmas, Easter, or Whitsuntide (4th Dec. 1884, 4th April, 1871, 19th April, 1886, 13th May, 1869, 11th May, 1880, 15th May, 1891, 21st May, 1896) ; and if notice is given of such motions, the notice may be placed either at the commencement of public business, or among the orders of the day or other notices of motion.

<sup>4</sup> 137 C. J. 492 ; 142 ib. 293, 316 H. D. 3 s. 60. On Tuesday, 24th May, 1898, the motion for the adjournment of the house over Whitsuntide was placed upon the notice paper immediately after a government bill, for which precedence, whenever it might be appointed, had been obtained. Notices of motions, sess. 1898, p. 1543.

<sup>5</sup> Motions for the discharge of members from select committees and the addition of other members may also be set down at this place, 158 C. J. 118 ; 167 ib. 151. 178 ; 170 ib. 279.

<sup>6</sup> 53 Parl. Deb. 4 s. 1383 ; 68 ib. 42.

<sup>7</sup> 346 H. D. 3 s. 1615.

<sup>8</sup> A member who rises after the question has been proposed can only speak if he opposes the motion, 23 Parl. Deb. 4 s. 225 ; 150 ib. 362 ; 171 ib. 687, 882 ; 14 H. C. Deb. 5 s. 1489, but he need not divide the house, 18 H. C. Deb. 5 s. 200. 364.

without further debate,<sup>1</sup> or else the question that the debate be now adjourned.<sup>2</sup> The Speaker, pursuant to the standing order, reserves to himself the power of proposing the question for an adjournment of the debate.<sup>3</sup>

**Motions relating to privilege.** Motions and orders of the day touching a matter of privilege (see p. 245) are placed upon the notice paper after these motions, and before the appointed business of the sitting.<sup>4</sup>

**Orders of the day and notices of motions.** The ordinary public business of the house consists of orders of the day, *i.e.* a bill or other matter which the house has ordered to be taken into consideration on a particular day; and notices of motions.

**Precedence of business.** The relative precedence of government business and business in charge of unofficial members, and of orders of the day<sup>5</sup> and notices of motions, is prescribed by the standing orders, or by such orders as the house may make from time to time. Government business has precedence at every sitting, but notices of motions and the public bills of unofficial members are given precedence over government business at a quarter-past eight on Tuesday until Easter, and on Wednesday until Whitsuntide and after Michaelmas. The bills of unofficial members have precedence of government business on Friday until Whitsuntide, and on the third and fourth Fridays after Whit Sunday.

**Arrangement of government business.** At sittings at which government business has precedence<sup>6</sup> the orders of the day and notices of motions of the government are placed in such sequence as the government may think fit, before other business set down upon the notice paper for those sittings; subject to the priority, on Tuesdays and Wednesdays, of motions set down by unofficial members at the commencement of public business (see

<sup>1</sup> 147 C. J. 105; 160 ib. 358; 161 ib. 165. An amendment cannot be moved to the question, 113 Parl. Deb. 4 s. 249; 190 ib. 1736.

<sup>2</sup> 146 C. J. 81; 154 ib. 167; 160 ib. 339; 161 ib. 166; 166 ib. 351. See also the Speaker's remarks in refusing to put the question for the adjournment of the debate on the motion for leave to introduce a government bill, 97 Parl. Deb. 4 s. 868. The adjourned debate of 6th March, 1899, on the nomination of a select committee, was ordered to be resumed at the commencement of public business on the following day, 154 C. J. 75, but such adjourned debates are usually resumed among the orders of the day, 146 C. J. 85; 161 ib. 168; 166 ib. 353.

<sup>3</sup> 67 Parl. Deb. 4 s. 1375; 148 ib. 388.

<sup>4</sup> 252 H. D. 3 s. 422. 438.

<sup>5</sup> The first resolution giving precedence to orders of the day was in 1811, and applied to Monday and Friday only, 66 C. J. 148, 19 H. D. 1 s. 106. 244. In 1835, it was extended to Wednesday, 90 C. J. 19.

<sup>6</sup> The origin of government nights may probably be traced to the following order, 15th Nov. 1670: "That Mondays and Fridays be appointed for the only sitting of committees to whom public bills are committed; and that no private committee do sit on the said days," 9 C. J. 164; see also 1 ib. 523. 640 (Committee of Grievances, 1621).

p. 229), and on Thursdays of the order of the day for the business of supply.

After a quarter-past eight on those days when government business has not precedence throughout the sitting,<sup>1</sup> the notices of motions of unofficial members are considered before their orders of the day, and any government business under consideration at a quarter-past eight is postponed without question put until the business of unofficial members is disposed of. The orders of the day set down for Fridays when government business has not precedence are usually, but not exclusively, the orders in the charge of unofficial members,<sup>2</sup> and on these days orders of the day are considered before notices of motions. By established usage, orders of the day are taken first when the house sits upon a Saturday.<sup>3</sup>

Arrangement of business of unofficial members.

On Thursdays, as soon as the committee of supply has been appointed, and the estimates have been presented, the business of supply must, until disposed of, be the first order of the day, unless the house otherwise order (see p. 236), while other days may also be allotted to the same business. On a day allotted to the business of supply,<sup>4</sup> after the presentation of bills and the motions, that can be made at the commencement of public business, have been concluded, no business other than supply can be taken before eleven o'clock,<sup>5</sup> with the exception of motions for the adjournment of the house<sup>6</sup> under standing order No. 10, opposed private business set down by direction of the chairman of ways and means, or a motion relating to privilege.<sup>7</sup>

Course of business on days allotted to supply.

Orders of the day in charge of unofficial members may be set down for any sitting devoted to government business, subject to the rights of the government, and to an arrangement, usually made on sittings

Bills and motions of unofficial members at government sittings.

<sup>1</sup> Before 1896, as the first order of the day on Friday was either supply or ways and means, and the question had to be proposed for the Speaker's leaving the chair, that day was devoted to the motions of unofficial members, their motions assuming the form of amendments on going into committee of supply, and on this occasion an exception was made to the rule that government tellers should act in support of the question that the Speaker should leave the chair for that committee, *Mail Contracts*, 12th March, 1869, 124 C. J. 80; *Monastic Institutions*, 31st March 1876, 131 ib. 132; *East India* (Duty on Cotton Goods), 4th April,

1879, 134 C. J. 136; *Sale of Intoxicating Drinks on Sunday*, 25th June, 1880, 135 ib. 247, also 138 ib. 154, 167; *Contagious Diseases Acts*, 20th April, 1883, 278 H. D. 3 s. 855.

<sup>2</sup> *Accidents (Mines and Factories) Bill*, 160 C. J. 40; *Post Office (Telephone Agreement)*, ib. 178.

<sup>3</sup> The order of business at a Saturday sitting rests with the government, 242 H. D. 3 s. 1639.

<sup>4</sup> 92 Parl. Deb. 4 s. 611; 125 ib. 1163.

<sup>5</sup> 121 Parl. Deb. 4 s. 103.

<sup>6</sup> 122 Parl. Deb. 4 s. 1361.

<sup>7</sup> 161 C. J. 311, 160 Parl. Deb. 4 s. 252.

on special occasions, such as a sitting on Saturday, that the time thus made available for business shall be devoted exclusively to government business : but a minister may give to a bill or motion, in charge of an unofficial member, a position among the government business.

Order of  
notices of  
motions.

Notices of motions, both official and unofficial, are placed upon the notice paper in the order imparted by the ballot, or in which they are handed in at the table, no priority as regards notices of motions being accorded to the government, save under the power of arranging their business given by standing order No. 5 (see p. 230).

Order of  
bills, other  
than  
govern-  
ment bills,  
after  
Whitsun-  
tide.  
S. O. 6,  
Appendix  
I.

After Whitsuntide, public bills, other than government bills, are arranged on the notice paper so as to give priority to the most advanced. Lords' amendments to bills received from the Commons are placed first, followed by third readings, the consideration of bills on report, bills in progress in committee, bills appointed for committee, and second readings. The order of bills standing at the same stage is decided, *inter se*, by the priority of their appointment for the day on which they appear upon the notice paper, and not by the date on which they reached their present stage.

Procedure  
upon the  
orders of  
the day.  
S. O. 12.  
13, Ap-  
pendix I.

Whenever orders of the day are the appointed business of the house, the Speaker, pursuant to standing order No. 12, directs the Clerk at the table to read the orders of the day, without any question being put ; and the orders are thereupon disposed of in accordance with standing order No. 13, following the order in which they stand upon the notice paper,<sup>1</sup> subject, however, to incidental interruptions of the proceedings of the house (see p. 240), and the postponement of business at certain sittings at a quarter-past eight o'clock (see p. 209).

Accordingly, whilst the Clerk is reading the orders of the day, the proceedings thereon may not be interrupted by any other business or debate which members may endeavour to interpose.<sup>2</sup> A motion

<sup>1</sup> The motion formerly moved when an order of the day was read, that it, either singly or coupled with other orders of the day, be postponed to give priority to a notice of motion or to another order of the day is at variance with the provision of standing order No. 13, 107 C. J. 186 ; 111 ib. 386. The same objection applies to attempts that have been made, after an order of the day has been read, to obtain precedence for other orders of the

day by means of an amendment moved to the question proposed from the chair, 107 C. J. 225 ; 109 ib. 342 ; 112 ib. 377. On the 21st Aug. 1894, an order of the day was deferred till after another order by a motion made at the commencement of public business by a member of the government, 149 C. J. 394, 29 Parl. Deb. 4 s. 178.

<sup>2</sup> 213 H. D. 3 s. 644.

for the adjournment of the house cannot be made therefore whilst the orders of the day are being read, either upon an order of the day being read or in the interval between reading one order and another. A motion for adjournment can, under such circumstances, only be made by a member of the government, because it is desired that the house should adjourn forthwith,<sup>1</sup> or that an opportunity should be provided for debating a subject that could not otherwise be raised.<sup>2</sup>

When an order of the day has been read, it must thereupon be proceeded with, appointed for a future day, or discharged. The Speaker, therefore, calls upon the member in charge thereof, no other member being allowed to interpose, unless with his consent ;<sup>3</sup> or, in the case of an adjourned debate, upon the member who has moved the adjournment, if he rises to address the chair (see p. 279). The Speaker, therefore, will not permit any question to be asked of a minister or other member when an order of the day has been read, unless it relates thereto. The right to move an order of the day, to a certain extent, belongs to the house at large, and is not vested solely in the member who has charge of the order.<sup>4</sup> In his absence, the motion thereon may be made by another member,<sup>5</sup> or, in like manner, a motion may be made that the order be deferred to a future day, though not to a remote date, in order to defeat the bill.<sup>6</sup> Nor, on these occasions, can a motion be made in contradiction to any intimation regarding an order of the day, which the member in charge thereof has made at the table. The revival of an order of the day (see p. 234), when it has been removed from the notice paper by an adjournment or other action on the part of the house, is, according to the habitual practice of the house, reserved for the member in charge thereof.

When the house has appointed a day for the consideration of a

Power of  
the house  
over  
orders of  
the day.

Orders of  
the day  
not to be

<sup>1</sup> 160 C. J. 346 ; 169 C. J. 95.

<sup>2</sup> 169 C. J. 408, 65 H. C. Deb. 5 s. 1831 ; 171 C. J. 36, 81 H. C. Deb. 5 s. 769. 800.

<sup>3</sup> 157 H. D. 3 s. 1301 ; 160 ib. 349. Sir J. Fergusson, on the Representation of the People Bill, 159 ib. 26.

<sup>4</sup> 305 H. D. 3 s. 353.

<sup>5</sup> 354 H. D. 3 s. 1157 ; 191 Parl. Deb. 4 s. 1107.

<sup>6</sup> Mr. Speaker's ruling (private), 13th May, 1886. So also on 21st Aug. 1893, Mr. Speaker said that he would decline to put the question for postponing the consideration of the Lords' amendments to

the Wild Birds' Protection Bill for three months except upon the motion of the member in charge of the bill. In the absence of the member in charge, a motion has sometimes been made, without notice, to discharge the order for the second reading of a bill. This practice has been strongly discountenanced from the chair, 216 H. D. 3 s. 276 ; 18 Parl. Deb. 4 s. 449. An amendment to the same effect, to a formal question for the postponement of a bill, has been discouraged no less distinctly, 224 H. D. 3 s. 1236 ; 240 ib. 1675.

brought forward to an earlier date.

bill or other matter, no earlier day can afterwards be substituted. This rule was enforced, even when a day had been named by mistake, and though no objection was raised to the appointment of an earlier day.<sup>1</sup> If, however, an error has arisen in the postponement of an order of the day, whilst the orders are being read, the transfer of the order of the day to an earlier day than that originally named has been allowed, on an appeal to the Speaker.<sup>2</sup>

Orders of the day unread. *S. O. I.* Appendix I.

Orders of the day which, owing to the suspension of a sitting, or to an adjournment of the house, have not been read at the table, are set down upon the notice paper after the orders of the day appointed for the next sitting of the house ; subject to the right of the government to arrange the order of their business, whenever such business has priority.<sup>3</sup>

Procedure on motions.

Motions, not being on a matter of privilege (see p. 241), or for unopposed returns, are called over by the Speaker according to the order in which the notices stand upon the notice paper ; and if a member does not rise when his name is called, he cannot subsequently ask that his name should be called again, for the purpose of moving the motion of which he had given notice. A member of the government may act in behalf of a colleague in all cases, including the proposal of new clauses on the report stage of a bill ; <sup>4</sup> but, with this exception, or in the case of an unopposed return, or of a motion for leave of absence, no motion can be moved save by the member in whose name the notice stands. The power of moving a motion, in terms that differ from the notice standing upon the paper, has been defined on p. 216.

Revival of dropped orders.

When an order of the day has been read, the proceedings thereon may be cut short by the adjournment of the house whilst those proceedings are in course of transaction, or before their resumption,

<sup>1</sup> London, Chatham and Dover Railway Bill, 6th July, 1863. In this case the standing orders were suspended in order to accelerate the next stage of the bill, 118 C. J. 237, 172 H. D. 3 s. 246. See also 305 ib. 379.

<sup>2</sup> Vehicles, Lights (No. 2) Bill, 31st July, 1893, 15 Parl. Deb. 4 s. 871 ; certain government orders of the day, 16th April, 1907, 172 Parl. Deb. 4 s. 1012.

<sup>3</sup> 323 H. D. 3 s. 1538.

<sup>4</sup> On the 12th May, 1864, in the absence of Lord Palmerston, Sir G. Grey was permitted to move the postponement of the

orders of the day, and make a motion relating to inspectors of schools, 176 H. D. 35. 2034. On the 28th Nov. 1867, in the absence of the chancellor of the exchequer, Mr. Hunt, the secretary of the treasury, made his financial statement in committee of ways and means. On the 24th Feb. 1881, in the absence of Mr. Gladstone, first lord of the treasury, the Speaker ruled that it would be competent for any minister of the Crown to make the motion that stood in Mr. Gladstone's name, 258 H. D. 3 s. 1664.



when they have been postponed at a quarter-past eight o'clock <sup>1</sup> (see p. 209). An order of the day, in such cases or if, when the order is read, no day is appointed for its future consideration, drops off the notice paper, as the house has made no order thereon. In committee the same result may be produced, either by a failure of a quorum of the house,<sup>2</sup> or by a resolution directing the chairman to leave the chair (see p. 378). To replace a dropped order of the day upon the notice paper, a motion is made before the commencement, or after the close, of public business, to appoint the order for a subsequent day.<sup>3</sup> These motions, which are made without notice, are usually treated as purely formal motions (see p. 219).<sup>4</sup> If on such order of the day procedure had been commenced and interrupted, the proceeding thus revived is set down for resumption at the position indicated by the last decision of the house entered upon the votes and proceedings.<sup>5</sup> If the interruption occurred after the adjournment of the debate had been moved, the motion for the revival of the order of the day relates to the order itself, the motion for the adjournment of the debate being treated as a lapsed motion.<sup>6</sup> When it is essential that proceedings on an order of the day, cut short by an unexpected adjournment, should be resumed at the next sitting of the house, a notice of motion is placed for that purpose, in the name of a minister of the Crown, upon the notice paper for the next sitting, at the commencement of public business; and the dropped order is placed, printed in italics, at the head of the list of the orders of the day,<sup>7</sup> or at the place among the orders of the day at which it is proposed to be taken.<sup>8</sup>

An order of the day may be superseded by the vote of the house, as, <sup>Superseded orders.</sup> for instance, when an amendment embodying an abstract proposition is substituted for the question that the bill be now read a second time,

<sup>1</sup> Light Railways Bill, 167 C. J. 97; Government of India Bill, ib. 121.

<sup>2</sup> 110 C. J. 449.

<sup>3</sup> Joint Stock Companies Bill, 176 H. D. 3 s. 99. 101; see also 119 C. J. 348. 351; 120 ib. 225. 352; 121 ib. 78; 122 ib. 377. 404; Supply, 125 ib. 280. 284; 145 ib. 305. 307. When supply has become a dropped order and the next sitting day has been a Thursday a motion for the revival of the committee has been held to be unnecessary in view of standing order No 15, 174 Parl. Deb. 4 s. 1166.

<sup>4</sup> If debate occurs on such a motion, it must be strictly limited to its precise

object, 290 H. D. 3 s. 934.

<sup>5</sup> 10th Aug. 1877, Sale of Food, &c., Bill, 132 C. J. 434. 435; 8th Aug. 1878, Sale of Intoxicating Liquor (Ireland) Bill, 133 ib. 419. 424; 5th May, 1884, Redistribution of Seats Bill, 139 ib. 208. 209.

<sup>6</sup> 134 C. J. 122. 124; 166 ib. 351. 388.

<sup>7</sup> 131 C. J. 282. 283, 230 H. D. 3 s. 431; 132 C. J. 294. 296, 235 H. D. 3 s. 203. 261; 133 C. J. 212. 213; 140 ib. 239. 240; 144 ib. 112. 115; 145 ib. 81. 83, 342 H. D. 3 s. 347; 150 C. J. 162. 164; notices of motions, sess. 1912-13, p. 5026.

<sup>8</sup> 132 C. J. 326. 328.

or for the question that Mr. Speaker do leave the chair for the committee of supply. In such a case, if it be deemed expedient to revive the order for the second reading of a bill (see p. 359), a motion can be made to that effect at a subsequent sitting; though, when the order for the committee of supply is superseded by an amendment, an immediate sitting of the committee can be appointed (see p. 476).

Renewal  
of notices  
of  
motions.

A notice of motion standing upon the notice paper for the day's sitting which is not brought on before the adjournment of the house, disappears from the paper, unless the member in whose name the notice stands, or a member in his behalf, gives a direction at the table for the replacement of the notice upon the notice paper for a future day.

Special  
arrange-  
ments for  
the trans-  
action of  
govern-  
ment  
business.

The precedence given to government business at every sitting and the allocation to government business of the whole of every sitting between Whitsuntide and Michaelmas, except two Fridays, have rendered unnecessary some of the arrangements that were made formerly, such as the appointment of morning sittings for government business on certain days of the week,<sup>1</sup> and the appropriation to it towards the close of the session of the whole time of the house.<sup>2</sup> If the session be prolonged beyond Michaelmas, however, an order of the house is necessary if it be desired to appropriate the whole time to government business.<sup>3</sup>

Priority  
given to  
govern-  
ment  
business.

Motions to facilitate the transaction of the business of the house are, as has been explained (p. 229), set down upon the notice paper to be taken at the commencement of public business. Priority is sometimes sought for government business, either generally or for specified orders of the day, whenever the same are set down upon the notice paper; and this object is attained, either by the actual suspension of a standing order, or by an order of the house which prescribes a course of action inconsistent therewith (see p. 140). Thus that part of the Tuesday<sup>4</sup> and Wednesday sittings, which is devoted to the motions of unofficial members, may be appropriated for a specified order of the day, or for government business generally.<sup>5</sup> Notices of motions are called on, however, as soon as the specially appointed business for the sitting has been disposed of.<sup>6</sup>

S. O. 4,  
Appendix  
I.

Priority  
to other  
business  
over

It is prescribed by standing order that the appointment of any

<sup>1</sup> 145 C. J. 226. 239; 147 ib. 200.

<sup>2</sup> 151 C. J. 374.

<sup>3</sup> 157 C. J. 437.

<sup>4</sup> On an occasion of this kind, the notices of motions and certain orders of the day, which were deprived of their

priority on a Tuesday, were, by order, placed first upon the succeeding Thursday, 128 C. J. 91.

<sup>5</sup> 143 C. J. 153. 169. 354; 147 ib. 325; 157 ib. 437; 159 ib. 30; 162 ib. 9.

<sup>6</sup> 316 H. D. 3 s. 417; 352 ib. 1853.

business other than the business of supply as the first order of the day on a Thursday, shall be effected by a motion set down at the commencement of public business which is to be decided without amendment or debate.<sup>1</sup>

supply on  
Thursday.  
S. O. 15,  
Appendix  
I.

On Tuesdays formerly, when priority was sought for an order of the day, the practice was either to persuade the members whose notices of motions stood upon the notice paper to waive their rights, or else to effect the desired arrangement by a resolution of the house, proposed without previous notice, at the commencement of the sitting, that the house do pass to the orders of the day,<sup>2</sup> or that the notices of motion be postponed until after the particular order of the day which it was desired to consider,<sup>3</sup> or that such order of the day have precedence of notices.<sup>4</sup> Such a mode of procedure is not consonant with present usage; and though persuasion occasionally may obtain priority for an order of the day at a sitting at which unofficial members' motions have precedence, that position is generally procured by a resolution of the house, agreed to, upon notice given, at the commencement of business.

Priority to  
orders of  
the day  
over  
notices of  
motions.

As on sittings devoted to government business, the government have the power to arrange their business, whether orders of the day or notices of motions, as they may think fit, a motion to give priority to a notice of motion over the orders of the day is now rarely needed on those sittings; though such a motion might be rendered necessary if an occasion arose on which the government desired to take the opinion of the house, whether priority should be given to an unofficial motion (see p. 239). When priority has been given by the order of the house to a notice of motion over the orders of the day, the Speaker calls on the member in whose name the notice stands, and when the motion has been considered, the house reverts to the orders of the day.

Priority to  
a notice  
of motion  
over  
orders of  
the day.  
S. O. 5,  
13, Appen-  
dix I.

The arrangements fixed by the standing orders for the twelve o'clock sittings on Fridays (before 1902, Wednesdays) are rarely disturbed. Still those standing orders have been wholly suspended,<sup>5</sup>

Arrange-  
ments on  
Friday  
sittings.  
S. O. 1, 2,  
3, Appen-  
dix I.

<sup>1</sup> Priority given to specified orders or notices of motions, 157 C. J. 215; 158 ib. 49. 121. 153. 213, etc., to "other government business," 164 ib. 80. 95, &c.

<sup>2</sup> 111 C. J. 167.

<sup>3</sup> 111 C. J. 181; 112 ib. 81; 132 ib. 208. 226; 136 ib. 18.

<sup>4</sup> 115 C. J. 199.

<sup>5</sup> 120 C. J. 449; 140 ib. 407; 170 ib. 30. 175. On Wednesday 5th July, 1865,

the house met at a quarter before four instead of twelve, and on Wednesday 12th August, 1885, at three o'clock in consequence of the exemption of those sittings from the standing order regulating Wednesday sittings, and on Friday 4th June, 1915, at half-past eleven o'clock, and on Friday 2nd July, 1915, at five o'clock pursuant to resolution, 170 C. J. 138. 179.

or suspended as regards the interruption of business, and the rising of the house at the time appointed by the standing order No. 2, in the case of certain orders of the day.<sup>1</sup> Government orders have also occasionally been given precedence at these sittings.<sup>2</sup>

Saturday  
sittings.

A Saturday sitting may be obtained upon the motion of a minister of the Crown, that the house shall sit on that day,<sup>3</sup> or by the appointment of an order of the day,<sup>4</sup> or of other matter of business for an ensuing Saturday,<sup>5</sup> or by a motion made on a Friday, that the house at its rising do adjourn till the morrow. Such sittings are occasionally held subject to the standing orders which regulate the Friday sittings, or to an order that, as soon as government business is concluded, the adjournment of the house shall take place without question put.<sup>6</sup>

Other  
facilities  
for  
govern-  
ment busi-  
ness.

Precedence is occasionally given to certain orders of the day over all other orders of the day and notices of motions.<sup>7</sup> Proceedings on the reports of the resolutions of the committee of ways and means and of committees authorizing public expenditure other than the committee of supply, have been frequently exempted by a sessional order from interruption under standing order No. 1,<sup>8</sup> and as the day for the prorogation draws nigh, all the government business is set free, during the remainder of the session, from every restriction on the transaction of business imposed by the standing orders.<sup>9</sup>

Prece-  
dence  
given by  
order to  
govern-  
ment bills.

Whenever, to meet the requirements of public business, immediate

<sup>1</sup> 127 C. J. 426; 129 ib. 303; 170 ib. 317. 345. The house has also ordered that a bill should be taken at the time for the interruption of business under standing order No. 1 (3) if not previously reached, and that it should then be proceeded with, though opposed, and that the proceedings thereon should not be interrupted, and that the house should continue to sit until they were disposed of, 144 ib. 293. The Speaker has also been directed to adjourn the house without question put at the conclusion of the exempted business, 144 ib. 447.

<sup>2</sup> 147 C. J. 325; 150 ib. 34; 157 ib. 26; 165 ib. 105. See also order appropriating Friday sittings to government business, 157 ib. 437.

<sup>3</sup> 169 C. J. 435.

<sup>4</sup> 212 H. D. 3 s. 1953; 331 ib. 1486; 144 C. J. 434; 153 ib. 389.

<sup>5</sup> 156 C. J. 93.

<sup>6</sup> 143 C. J. 427. 493; 144 ib. 434. 453; 145 ib. 531. 553; see resolution moved, 11th Feb. 1893, p. 218, n. 6.

<sup>7</sup> Protection of Person and Property (Ireland) Bill and Peace Preservation (Ireland) Bill, 136 C. J. 32, 258 H. D. 3 s. 1744; Prevention of Crime (Ireland) Bill, Arrears of Rent (Ireland) Bill, 137 C. J. 224. 289. 491; Rules of Procedure, 142 ib. 72; 151 ib. 57; 157 ib. 36; Criminal Law Amendment (Ireland) Bill, 142 ib. 140; Consolidated Fund Bill, 144 ib. 73; Customs, &c., Bill, 145 ib. 334; Tithe Rent-Charge Bill, 146 ib. 81; Purchase of Land and Congested Districts (Ireland) Bill, 146 ib. 247; Financial Business, 147 ib. 114; 149 ib. 10; Government Business, 148 ib. 177. 538; Voluntary Schools Bill, 152 ib. 63; Address in answer to King's speech, 158 ib. 11.

<sup>8</sup> 160 C. J. 112; 163 ib. 212; 164 ib. 32. The reports of the committee of supply were formerly included in this motion, 144 ib. 145; 145 ib. 239; 147 ib. 95. The motion was negatived in 1904, 159 ib. 49.

<sup>9</sup> 146 C. J. 449; 147 C. J. 325.

action on the part of the house is needed, orders of the day relating to the stages of a bill, such as a Consolidated Fund Bill, or to the consideration of a resolution on which the introduction of a bill is founded, are set down before all other orders of the day or notices of motions pursuant to an order of the house made on the motion of a minister.<sup>1</sup>

An objection taken to the form of the motion on which special facilities are obtained for the transaction of government business on the ground that the provisions contained in the motion included several, and, to a certain extent, distinct, propositions has been overruled.<sup>2</sup> Amendments to these motions must be strictly relevant to the terms and purpose of the motion; and amendments stating, as an argument against the motion, that the house had no confidence in the government, or that motions giving precedence to government business might be rendered unnecessary by altering the procedure of the house, have therefore been ruled to be out of order.<sup>3</sup>

In the case of motions amounting to a distinct vote of want of confidence in the government, proposed or sanctioned by the leader of the opposition, it is the practice of the government to concede an opportunity of discussion,<sup>4</sup> but in all other cases the question whether the government should concede priority to a notice of motion, or to

Business  
of the  
house  
motions.

<sup>1</sup> Exchequer Bills Bill, and Ways and Means Report, 109 C. J. 226; Annuities Bill, 111 ib. 220; Oaths Bill, 113 ib. 167; Tobacco Duties Bill, third reading, 23rd March, 1863, 118 ib. 130; Mutiny and Marine Mutiny Bills, third reading, 31st March, 1868, 123 ib. 116, 191 H. D. 3 s. 573; Elementary Education Bill, 9th June, 1891, 146 C. J. 340, 343, 354 H. D. 3 s. 31; stages of the Consolidated Fund Bill, 128 C. J. 120; 129 ib. 64; 131 ib. 118, 228 H. D. 3 s. 564; 137 C. J. 118; 145 ib. 213, 214; 147 ib. 127; 148 ib. 151; 152 ib. 133, 134; 153 ib. 102, 103; 154 ib. 108; 155 ib. 108; 156 ib. 104.

<sup>2</sup> 334 H. D. 3 s. 142. On 8th October, 1912, the Speaker on the appeal of a member agreed to divide such a motion, 42 H. C. Deb. 5 s. 161.

<sup>3</sup> 19th March, 30th April, 1889, Mr. Bradlaugh's and Mr. E. Robertson's notices of amendments; 16th July, 1891, 355 H. D. 3 s. 1433. Mr. Seton-Karr's notices of amendments, 31st May, 1894;

Notices of Motions, p. 1080, 25 Parl. Deb. 4 s. 49; and 29th April, 1895; Notices of Motions, p. 1215, 33 Parl. Deb. 4 s. 53; Mr. Elliott Lee's notice of amendment, 28th February, 1895, Notices of Motions, p. 385, 31 Parl. Deb. 4 s. 78; Sir Henry Dalziel's notice of amendment, 28th February, 1910, Notices of Motions, p. 118, 14 H. C. Deb. 5 s. 594. Amendments, "gambling," &c., to motion (Derby day adjournment), 30th May, 1892 and 1893, Notices, pp. 1593, 1980. See also Mr. Chamberlain's notice of an amendment to a motion prescribing procedure for the report stage of the Government of Ireland Bill as stated, 18th Aug. 1893, and as moved, 21st Aug. 16 Parl. Deb. 4 s. 532, 654, 148 C. J. 513. An amendment to the motion relating to the sitting of committees on Ascension day is out of order, 40 Parl. Deb. 4 s. 1263.

<sup>4</sup> 136 C. J. 401; 139 ib. 223; 140 ib. 60; 159 ib. 97; 164 ib. 85; 166 ib. 388; 169 ib. 90.

Facilities  
given by  
govern-  
ment to  
unofficial  
motions.

an order of the day in the charge of an unofficial member, is left entirely to their discretion.<sup>1</sup> In session 1914-16 and the following session, during which government business was given precedence at every sitting, facilities were afforded on various occasions for notices of motions of unofficial members.<sup>2</sup>

**Incidental interruptions to proceedings.** Besides the interruption of business, at the moment prescribed by the standing orders (see p. 198), or by a member rising to move the closure of debate (see p. 313), proceedings in Parliament may be interrupted by a matter of privilege or order, which calls for the immediate interposition of the house on a matter of recent occurrence (see p. 241); by occasions of sudden disorder in the house, and by the suspension of members, or other proceedings thereby occasioned (see p. 302); by a message from the sovereign or the lords commissioners, commanding or desiring the attendance of the house in the House of Peers; <sup>3</sup> by the presentation of the answer to an address to the Crown <sup>4</sup> (see p. 548); by a message from the other house, and by proceedings taken thereon <sup>5</sup> (see p. 387); by a conference with the Lords; <sup>6</sup> by a report of reasons for disagreeing to Lords' amendments <sup>7</sup> (see p. 390); by the clerk of the Crown attending by order of the house to amend a return <sup>8</sup> (see p. 584); and by a report from

<sup>1</sup> 210 H. D. 3 s. 1328. 1754; 217 ib. 1256; 303 ib. 1374, 10 Parl. Deb. 4 s. 1044. Facilities were afforded, 1868, to Irish Church Resolutions, 191 H. D. 3 s. 31. 826. 1746; 1876, Land Tenure (Ireland) Bill, 131 C. J. 295; 1878, Sale of Intoxicating Liquor on Sunday (Ireland) Bill, 133 ib. 156; 1883, Kilmainham prisoners, 277 H. D. 3 s. 850; 1886, Contagious Diseases Acts Repeal (No. 2) Bill, 141 C. J. 118; 1893, Executive in Ireland, 148 C. J. 165; 1897 and 1900, Financial Relations (England and Ireland), 152 ib. 144, 155 ib. 112; 1897, British South Africa (Select Committee), 152 ib. 388; 1905, Public Accounts Committee (Reports), Post-office Telephone Agreement, 160 ib. 359. 408; 1906, Free Trade, Radio-Telegraphic Convention, 161 ib. 59. 504; 1907, Land Purchase (Ireland) Finance, 162 ib. 308; 1908, Anglo-Russian Convention, Armaments (Reduction), Government of Ireland, Unemployment, 163 ib. 46. 72. 126. 416; 1910, Parliamentary Franchise (Women) Bill, 165 ib. 225; 1911, Army and Navy Expenditure, Appointment of Magistrates, 166 ib. 75. 532; 1912-13, Protection of Workmen and

East India (Finance) (Select Committee), 167 ib. 202. 546; 1914, Naval and Military Movements (Inquiry), 169 ib. 166.

<sup>2</sup> 170 C. J. 51. 57. 63. 73. 97. 98. 102. 332. 351; 171 ib. 74. 80. 87. 159. 212. 215. 221. 228. 231.

<sup>3</sup> 93 C. J. 227; 106 ib. 443; 159 ib. 116; 162 ib. 305. 442; 169 ib. 437. 440. 454. On the 20th April, 1863, the reading of a petition was so interrupted, and was resumed on the return of the Speaker from the Lords, 118 C. J. 168.

<sup>4</sup> 108 C. J. 438; 125 ib. 377; 134 ib. 23. This rule, however, does not apply to a message from the Crown. On the 5th June, 1866, a message relating to the marriage of Princess Mary of Cambridge was brought up between one motion and another: but not so as to interrupt a debate.

<sup>5</sup> A message brought by the Clerk does not ordinarily interrupt the business under discussion, but there are occasions when such an interruption can arise, 126 C. J. 57; 146 ib. 340; 170 ib. 31.

<sup>6</sup> 98 C. J. 347. 484.

<sup>7</sup> 135 C. J. 431; 137 ib. 452.

<sup>8</sup> 93 C. J. 276. 308.

the Serjeant-at-arms regarding the execution of the orders of the house.<sup>1</sup> Examples occur of an interruption caused by a motion for reading an Act of Parliament, an entry in the journal or other public document: but the practice by which such documents have been permitted to be read after the commencement of the debate, though not absolutely without recognition in modern times, may be regarded as obsolete.<sup>2</sup>

When the cause of interruption has ceased, or the proceeding thereon has been disposed of, the debate, or the business in hand which was interrupted, is resumed at the point where the interruption had occurred; <sup>Resumption of business after interruption.</sup> <sup>3</sup> though the resumption of a proceeding, subjected to an interruption, has been sometimes delayed by the occurrence of further interruptions.<sup>4</sup>

The proceedings of the house may be interrupted at any moment,<sup>5</sup> save during the progress of a division (see p. 307), by a motion based on a matter of privilege, when a matter has recently arisen which directly concerns the privileges of the house; <sup>Interruptions by matters of privilege.</sup> <sup>6</sup> and in that case the house will entertain the motion forthwith.<sup>7</sup> If complaint of a

<sup>1</sup> 135 C. J. 236. The business of the house was in former times interrupted by a motion that candles be brought in: but, by order 6th Feb. 1717, the Serjeant was charged with the duty of having the house lighted when "daylight be shut in," 18 ib. 718; and now the direction to that effect is given by the Speaker or the chairman.

<sup>2</sup> 2 Hatsell, 121. 163; 80 C. J. 537; 93 ib. 204; 97 ib. 129; 98 ib. 112; 123 ib. 148; 124 ib. 57. In one case certain Acts were directed to be read, by way of amendment to the original question, 109 ib. 124.

<sup>3</sup> When the consideration of private business had been interrupted or had not been commenced owing to a message requiring the attendance of the house in the House of Peers, and the house had not returned until after the time after which such business could not be taken, the private business that could not be considered owing to the attendance of the house in the House of Peers, was appointed for the evening sitting, or for the following day, 158 C. J. 412; 20th and 21st June, 1905, Private Business, pp. 567, 577.

<sup>4</sup> 103 C. J. 551. 755.

<sup>5</sup> This ancient rule was thus expressed in debate by an eminent authority:

"Nothing can be so regular, according to the practice of this house, as when any member brings under the consideration of the house a breach of its privileges, for the house to hear it—nay, to hear it with or without notice—whether any question is or is not before it; and even in the midst of another discussion, if a member should rise to complain of a breach of the privileges of the house, they have always instantly heard him," Mr. Williams Wynn 11th Feb. 1836, 31 H. D. 3 s. 274. The latter part of this statement, it need scarcely be said, is limited to breaches of privilege committed during a discussion or so immediately before it that no earlier opportunity of making a complaint has arisen, as for example, an insult to, or assault upon, a member, 79 C. J. 483, or any sudden act of disorder, 65 ib. 134.

<sup>6</sup> 159 H. D. 3 s. 2035; 174 ib. 190; 253 ib. 433; 261 ib. 694; 266 ib. 788.

<sup>7</sup> Interference of a peer with the election for Stamford, 98 C. J. 931; Sligo election compromise, 98 ib. 1236; Peterborough election, appointment and nomination of committee, 108 C. J. 691. 703; other election cases, see p. 580. Amcer Ali Moorad's claim, 113 C. J. 68; Lisburn election, 119 ib. 184; Azeem Jah (forged signatures to petitions), 120 ib. 247;

breach of privilege be made whilst the house is in committee, the committee reports progress <sup>1</sup> (see p. 81).

Con-  
sideration  
of matters  
of privi-  
lege before  
com-  
mence-  
ment of  
public  
business.

A privilege matter may also be brought forward without notice, before the commencement of public business, and is considered immediately, on the assumption that the matter is brought forward without delay, and that its immediate consideration is essential to the dignity of the house.<sup>2</sup> Although, in some respects, a matter of privilege properly does not admit of notice, if a member can give notice, and the matter is a question of privilege, precedence is conceded to it.<sup>3</sup> The right of complaint is not restricted to the member affected by the breach of privilege.<sup>4</sup> Motions founded on a breach of privilege are also entertained upon the consideration of a report from a select committee directing the attention of the house to the matter with a view to action being taken thereon (see p. 123).

Circum-  
stances  
deter-  
mining  
priority of  
privilege  
motions.

The quality of privilege, and the consequent right of immediate consideration, do not depend solely on the nature and object of the motion, but may be imparted or withdrawn by the circumstances that attend the motion. As a matter affecting the seat of a member of the house is a matter of privilege,<sup>5</sup> precedence is accorded to a motion for a new writ, when such motion is made without notice : <sup>6</sup> but that right ceases when notice of a motion for a new writ is prescribed by a resolution of the house, in cases of seats declared void for bribery and treating (see p. 578). Again, on the 24th March, 1882, precedence was claimed for a motion for a new writ for the borough of Northampton ; but the Speaker stated that such motions

King's County election, 121 ib. 55 ; complaint of Mr. Plimsoll's book, 128 ib. 60 ; complaint of Mr. Sullivan against Dr. Kenealy, 132 ib. 144 ; forged signatures to petitions, 133 ib. 130, 238 H. D. 3 s. 1741 ; Clare writ, 245 H. D. 3 s. 518 ; imprisonment of a member, 157 C. J. 300 ; letter of a member, 166 ib. 37.

<sup>1</sup> 143 C. J. 483.

<sup>2</sup> Forgery of a petition, 1829, 84 C. J. 187 ; complaints against newspapers, 93 ib. 306 ; 106 ib. 320, &c. ; complaints regarding petitions, 131 C. J. 141. 147, 228 H. D. 3 s. 1400 ; letter of a member, 162 C. J. 327 ; 166 ib. 34 ; Derbyshire High Peak election, 164 C. J. 319.

<sup>3</sup> Election compromises, 12th and 22nd May, 1848, 98 H. D. 3 s. 931. 1236 ; Peterborough election, 18th and 21st July, 1853, 108 C. J. 691. 703 ; expulsion of

James Sadleir, 24th July, 1856, and 16th Feb. 1857, 143 H. D. 3 s. 1386, 144 ib. 702 ; Mr. Townsend's bankruptcy, 1858, 113 C. J. 229 ; case of Mr. Bradlaugh, 11th and 12th May, 1881, 261 H. D. 3 s. 218. 282. 431 ; Mr. Davitt, 27th Feb. 1882, 266 ib. 1811. 1842 ; issue of a new writ, 161 C. J. 311, 160 Parl. Deb. 4 s. 252 ; 162 C. J. 14 ; letter of a member, 178 Parl. Deb. 4 s. 57 ; complaint against a newspaper, 51 H. C. Deb. 5 s. 57. 231.

<sup>4</sup> Complaint, Sir Charles Lewis, 142 C. J. 208.

<sup>5</sup> Seat of fifth under secretary of state, 119 C. J. 174.

<sup>6</sup> 245 H. D. 3 s. 518 ; 265 ib. 886. The right of privilege has also been accorded to a motion to rescind a resolution of the house affecting the seat of a member, 135 C. J. 235, 253 H. D. 3 s. 644.



were founded upon recent events, *e.g.* the death of a member, his acceptance of office, or the report of election judges : but as the object of the motion was to raise an irregular debate upon the claim of Mr. Bradlaugh to take the oath, it was not entitled to privilege.<sup>1</sup> So also, when, during the session of 1887, a motion was brought forward based on charges brought by the *Times* newspaper against certain members of the house (see p. 79), the motion was ruled not to be a motion of privilege, because it was not a matter requiring immediate consideration, and because the charges did not touch the conduct of members in the house : <sup>2</sup> but in the year 1890, a motion bearing on the subject of those charges, asserting that they were a libel on the house, was treated as of privilege, being brought forward at the earliest moment, the first day of the session, and because the charges were undoubtedly designed to influence the proceedings of the house.<sup>3</sup> Nor does a motion embodying a matter of privilege, such as a motion to rescind a resolution of the house affecting the seat of a member, lose its right of privilege, because the motion may have been deferred some days to suit the convenience of the house.<sup>4</sup>

A question of order in the house, or in a committee thereof, cannot be treated as a matter of privilege ; <sup>5</sup> and, as the privilege of freedom from arrest is limited to civil causes, and cannot be pleaded to arrests made on a criminal charge, or to enforce the administration of justice (see p. 112), the circumstances attending arrest or imprisonment for these causes cannot be brought before the house as a matter of privilege.<sup>6</sup> A letter addressed by a member to the Speaker regarding his arrest cannot be treated as a matter of privilege,<sup>7</sup> nor the failure of a judge or committing magistrate to notify a member's arrest ; <sup>8</sup> though, an objection having been taken to the terms of a magistrate's letter communicating to the house the imprisonment of a member, a motion made without notice was permitted, that the letter was a breach of privilege.<sup>9</sup> The circumstances connected with the committal of members for contempt of court have, however, been considered as a matter of privilege (see p. 115), but the Speaker has

Cases not within privilege.

<sup>1</sup> 267 H. D. 3 s. 1821.

<sup>2</sup> 311 H. D. 3 s. 286.

<sup>3</sup> The *Times* newspaper and Mr. Parnell, 145 C. J. 7, 341 H. D. 3 s. 43 ; see also 156 C. J. 414.

<sup>4</sup> 261 H. D. 3 s. 282 ; 178 Parl. Deb. 4 s. 198 ; 51 H. C. Deb. 5 s. 57.

<sup>5</sup> 239 H. D. 3 s. 671 ; 258 ib. 8 ; 330 ib. 1223 ; 90 Parl. Deb. 4 s. 698 ; 177 ib.

718.

<sup>6</sup> See debate on Mr. P. O'Brien's arrest, 322 H. D. 3 s. 262-267 ; and 92 Parl. Deb. 4 s. 1062 ; 101 ib. 61 ; 109 ib. 477 ; 123 ib. 309.

<sup>7</sup> 261 H. D. 3 s. 1785.

<sup>8</sup> 113 Parl. Deb. 4 s. 14.

<sup>9</sup> 143 C. J. 222, 326 H. D. 3 s. 177. 183.

refused to allow the committal of a member for a criminal contempt of court to be so raised.<sup>1</sup> The issue of an order of attachment against a member by a judge of the high court of justice in Ireland has not been allowed to be discussed as a matter of privilege, inasmuch as until the member was arrested he was not prevented from attending the house.<sup>2</sup> A motion to rescind a resolution for the suspension of a member is not entitled to the position of a matter of privilege.<sup>3</sup>

Privilege  
and libels  
on mem-  
bers.

To justify the claim of privilege for a motion complaining of alleged libels on members (see p. 83), the conduct and language on which the libel is based must be actions performed or words uttered in the actual transaction of the business of the house.<sup>4</sup> On this ground a charge made by a newspaper against a member, that a statement he made in the house was false, received the priority accorded to a matter of privilege.<sup>5</sup> Although privilege cannot be claimed for a motion containing imputations upon the character of a member which are not immediately connected with his conduct in Parliament, yet, owing to attendant circumstances, these motions occasionally have been treated as privileged motions.<sup>6</sup> For instance, when, on the 22nd July, 1861, a motion was proposed concerning the conduct of a member in connection with a joint stock company, such conduct being wholly unconnected with matters arising in the house, the Speaker said it was doubtful whether the motion was properly a matter of privilege, but as it affected the character of a member, it could be proceeded with, if it were the pleasure of the house.<sup>7</sup>

When  
claim of  
privilege  
failed.

Because a motion has been treated as of privilege, that right

<sup>1</sup> 123 Parl. Deb. 4 s. 309; 183 ib. 82.

<sup>2</sup> 106 Parl. Deb. 4 s. 1335.

<sup>3</sup> 313 H. D. 3 s. 1124; 7 H. C. Deb. 5 s. 2303. On 7th March, 1901, the Speaker granted precedence to a motion to rescind the suspension of a member under the special circumstances of the case, as a letter from the member, who had been suspended on the report of the chairman of ways and means, raised a strong *prima facie* case of error in the report, 156 C. J. 65, 90 Parl. Deb. 4 s. 831.

<sup>4</sup> See Speaker's rulings, case of the postal clerks, 262 H. D. 3 s. 1036; complaint against the *Times* newspaper, 311 ib. 286; complaint by Mr. Sexton against Mr. Brodrick, 313 ib. 1801; Mr. J. M. Cameron's complaint, 323 ib. 1312; complaint by Mr. Sexton against Sir W. Mar-

riott (after passages complained of had been read at the table), 145 C. J. 221, 343 H. D. 3 s. 181; complaint of Mr. Havelock Wilson against *St. James's Gazette*, 38 Parl. Deb. 4 s. 1177; complaint against Mr. Lynch in connection with Galway election of his claim to have served with the king's enemies, 101 ib. 58; charges in connection with an action-at-law in which a member was concerned, 165 ib. 1254; complaint by Mr. MacNeill against Mr. Balfour, 171 ib. 876; complaint by Mr. Markham against Mr. Curran, 192 ib. 1738. See also Mr. Speaker's ruling restricting debate, 178 ib. 357, 358.

<sup>5</sup> 142 C. J. 208, 314 H. D. 3 s. 717; 156 C. J. 356.

<sup>6</sup> 174 H. D. 3 s. 306; 235 ib. 829.

<sup>7</sup> 164 H. D. 3 s. 1285.

cannot be claimed for subsequent motions bearing on the same subject. On the 5th July, 1860, Lord Palmerston proposed resolutions founded on the report of the committee on Tax Bills, as a matter of privilege, before the orders of the day: but on the 17th, Lord Fermoy having given notice of another resolution on that subject, the Speaker held that he was not entitled to precedence, his object being merely to review a former determination of the house.<sup>1</sup> The same ruling has been applied to a motion to add names to a select committee appointed as a matter of privilege,<sup>2</sup> and to the reports of committees appointed to consider matters of privilege.<sup>3</sup> In like manner, when the house has decided upon the principle raised by a privileged motion, the same principle cannot be brought forward as privilege, in another form, during the same session.<sup>4</sup>

Opposition by a direct vote given against a motion involving a matter of privilege is not essential: these motions can be set aside indirectly, as, for instance, by an amendment proposing that the house should pass to the appointed business of the sitting,<sup>5</sup> or by the adoption of the previous question.<sup>6</sup>

A motion or an order of the day relating to a matter of privilege is either placed at the head of the notice paper, above the other orders of the day, and without a number, so that it is called on immediately after the motions that may be set down for consideration at the commencement of public business (see p. 229);<sup>7</sup> or the order is called on before the other orders of the day, or before notices, if the order has not received that precedence upon the notice paper.<sup>8</sup>

As precedence is naturally desired by members, care has been taken, by rulings from the chair, not to extend that claim to any

Position of  
privilege  
motions  
on notice  
paper.

Claim of  
privilege  
overruled  
from the  
chair.

<sup>1</sup> 159 H. D. 3 s. 2035.

<sup>2</sup> 252 H. D. 3 s. 667. 788.

<sup>3</sup> 275 H. D. 3 s. 228; 332 ib. 77; 112 Parl. Deb. 4 s. 287.

<sup>4</sup> 317 H. D. 3 s. 1489.

<sup>5</sup> 135 C. J. 57; 139 ib. 167; 142 ib. 358; 143 ib. 420; 149 ib. 33; 155 ib. 179; 162 ib. 328.

<sup>6</sup> 135 C. J. 57; 148 ib. 631; 160 ib. 3. See also 2 Cav. Deb. 385.

<sup>7</sup> To adjourned debates on privilege cases a similar position is assigned. Case of the printers, 92 C. J. 450, 38 H. D. 3 s. 1249; 95 C. J. 13. 15. 19. 23. 70, 51 H. D. 3 s. 196. 251. 358. 422, 52 ib. 7; case of Azeem Jah, 120 C. J. 252; Mr. Plimsoll's case, 226 H. D. 3 s. 178; Public Petitions Committee (Special Report), 133 C. J. 130,

238 H. D. 3 s. 1741; case of Mr. Wedgwood, 166 C. J. 36; case of North Galway writ, 169 ib. 329. A motion giving government business precedence does not deprive a notice of motion relating to privilege of its priority, 271 H. D. 3 s. 1275; 167 Parl. Deb. 4 s. 1051.

<sup>8</sup> Carlow and other election cases, 91 C. J. 24. 42, 31 H. D. 3 s. 272; 97 C. J. 263; Mr. Roebuck (Chiltern Hundreds), 155 H. D. 3 s. 945, &c.; Mr. Bright (Pon tefract election), 114 C. J. 357. 362. 376, 155 H. D. 3 s. 1254; case of printers, 92 C. J. 436; case of Washington Wilks, 113 ib. 202. 203; case of Mr. O'Donnell, 137 ib. 328, 271 H. D. 3 s. 1303; Report on Yorkshire, &c., Insurance Company, 338 ib. 1089.

motion which does not strictly relate to an urgent matter of privilege, properly so called;<sup>1</sup> and many motions, more or less affecting privilege, have been brought on in their turn, with other notices of motions.<sup>2</sup>

<sup>1</sup> 146 H. D. 3 s. 769; 159 ib. 2035; 174 ib. 190. 306; 187 ib. 14; 235 ib. 829; 239 ib. 671; 252 ib. 667. 788; 261 ib. 694. 1785; 262 ib. 1035; 266 ib. 788; 51 Parl. Deb. 4 s. 311; 92 ib. 376; 108 ib. 204-206; 134 ib. 777; 176 ib. 56; 194 ib. 168; 4 H. C. Deb. 5 s. 1458; 8 ib. 1708; 9 ib. 2423; 34 ib. 42; 51 ib. 720. For a similar ruling in committee of the whole

house, see 9 H. C. Deb. 5 s. 2370.

<sup>2</sup> Mr. Isaac Butt's notice relating to the *Times* newspaper, 109 C. J. 40; Mr. C. Forster's motion for a committee on the forgery of signatures to petitions, 120 ib. 157; Mr. Callan's motion for a committee to inquire how Mr. Newdegate's name was affixed to a petition, 7th April, 1876, &c.

## CHAPTER IX.

## MOTIONS AND QUESTIONS.

Every matter is determined in both houses upon questions put by the Speaker upon a motion made by a member, and resolved in the affirmative or negative, as the case may be. Formerly it was customary for the Speaker, when he thought fit, to frame a motion out of the debate.<sup>1</sup> This ancient custom, however, was open to abuses and misconception,<sup>2</sup> and has long since been disused.<sup>3</sup>

When a member is at liberty to make a motion, he may speak in its favour before he actually proposes it: but a speech is only allowed upon the understanding, first, that he speaks to the question; and, secondly, that he concludes by proposing his motion formally. Even when notice of a motion is not required (see p. 219) the motion should be placed, in print or writing, in the Speaker's hands; as, except in the event of any informality in the form of the motion, which may necessitate the Speaker's intervention, or may compel him to decline to put the question from the chair, the Speaker proposes the question in the words of the mover.

In the upper house any lord may submit a motion or amendment for the decision of their lordships without a seconder,—the only motion requiring a seconder, by usage, being that for the address in answer to the King's speech.

In the Commons, after a motion has been made or an amendment has been proposed, it must be seconded by another member; otherwise it is immediately dropped and further debate must be

<sup>1</sup> Scobell, 22; 2 Hatsell, 112.

<sup>2</sup> Burnet relates of Mr. Speaker Seymour, that, if the court party was not well gathered together, he kept "the house from doing anything by a wilful mistaking or mis-stating the question. By that he gave time to those who were appointed for that mercenary work to go about and

gather in all their party; and then he would very fairly state the question, when he saw he was sure to carry it." Burnet, ii. 72.

<sup>3</sup> The last example, 15th Feb. 1770, was by Sir Fletcher Norton, on the Sudbury election petition, 1 Cav. Deb. 458.

discontinued, as no question is before the house. When a motion or amendment is not seconded, no entry appears in "The Votes and Proceedings," as the house is not put in possession of it and *res gestæ* only are entered.<sup>1</sup> In the case of a substantive motion the Speaker satisfies himself that the motion has been formally seconded, before he puts the question: but where an unopposed return is moved, or other formal motion made, the formality of seconding the motion is not generally observed, but is taken to be tacitly complied with. Orders of the day and motions in committee do not require a seconder.

Matters to be dealt with by a substantive motion.

Certain matters cannot be debated, save upon a substantive motion which can be dealt with by amendment or by the distinct vote of the house. Among these may be mentioned the conduct of the sovereign, the heir to the throne, the Viceroy and Governor-General of India, the Lord-Lieutenant of Ireland, the Governors-General of the Dominions,<sup>2</sup> the Speaker,<sup>3</sup> the chairman of ways and means,<sup>4</sup> members of either house of Parliament and judges of the superior courts of the United Kingdom, including persons holding the position of a judge, such as a judge in a court of bankruptcy and of a county court.<sup>5</sup> These matters cannot, therefore, be questioned by way of amendment, or upon a motion for adjournment under standing order No. 10<sup>6</sup> (see p. 226). For the same reason, no charge of a personal character can be raised, save upon a direct and substantive motion to that effect.<sup>7</sup> No statement of that kind can, therefore, be embodied in a notice stating that the attention of the house will be called to a matter of that nature.<sup>8</sup>

Matters pending judicial decision.

A matter, whilst under adjudication by a court of law, should not be brought before the house by a motion or otherwise.<sup>9</sup>

Matters already decided.

A motion or an amendment may not be brought forward which is the same, in substance, as a question which has been decided in the affirmative or negative during the current session (see p. 267).

Motions and the rule of anticipation.

A motion must not anticipate a matter already appointed for

<sup>1</sup> 177 H. D. 3 s. 1528; 133 Parl. Deb. 4 s. 322; 147 ib. 1040; 164 ib. 212; 166 ib. 1222. 1660; 167 ib. 736. On going into committee of supply, 15 H. C. Deb. 5 s. 114.

<sup>2</sup> 55 H. C. Deb. 5 s. 243; 56 ib. 809.

<sup>3</sup> 313 H. D. 3 s. 371.

<sup>4</sup> 10 Parl. Deb. 4 s. 1411; 95 ib. 235; 48 H. C. Deb. 5 s. 749. Temporary chairman, 98 Parl. Deb. 4 s. 245.

<sup>5</sup> 312 H. D. 3 s. 736. 1110; 320 ib. 1024; 14 Parl. Deb. 4 s. 1090.

<sup>6</sup> 271 H. D. 3 s. 1290; 140 C. J. 78, 294 H. D. 3 s. 1912; 337 ib. 1020; 55 H. C. Deb. 5 s. 39.242.

<sup>7</sup> 96 H. D. 3 s. 1206.

<sup>8</sup> 277 H. D. 3 s. 1500.

<sup>9</sup> 72 H. D. 3 s. 85. 98; 335 ib. 992. 1254. 1267; 337 ib. 899.

consideration by the house,<sup>1</sup> whether it be a bill<sup>2</sup> or an adjourned debate upon a motion. A motion is equally out of order, if it anticipates a notice of motion for leave to bring in a bill<sup>3</sup> that includes the subject proposed to be dealt with by the motion. A matter already appointed for consideration by the house cannot be anticipated by an amendment,<sup>4</sup> while a notice of motion as long as it remains upon the paper, whether for a specified day or not, prevents its subject-matter being discussed by means of an amendment to a motion<sup>5</sup> or of a motion for the adjournment of the house (see p. 282), including a motion under standing order No. 10 (see p. 226). In determining, however, whether a discussion is out of order on the ground of anticipation, the Speaker must have regard to the probability of the matter anticipated being brought before the house within a reasonable time. The reference of a matter to a select committee does not prevent the consideration of the same matter by the house.<sup>6</sup>

S. O. 10A,  
Appendix  
I.

In 1794, Earl Stanhope had proposed a resolution with a long preamble, which the lord chancellor omitted on putting the question. On a subsequent day a complaint and a motion were made regarding this omission. After a debate, from which it appeared that the words omitted had been of an objectionable character and that the lord chancellor had collected the unanimous opinion of the house for their omission, the motion was superseded by adjournment.<sup>7</sup>

Omission  
of objectionable  
words  
from a  
motion.

In the Lords, when a motion has been made, a question is generally proposed "that that motion be agreed to:" but on the stages

Proposal  
of ques-  
tion upon  
a motion.

<sup>1</sup> 158 H. D. 3 s. 1851; 219 ib. 1054; 224 ib. 915; 344 ib. 307; 352 ib. 1636; 171 Parl. Deb. 4 s. 1525; 176 ib. 631; 192 ib. 228; 29 H. C. Deb. 5 s. 1362; 32 ib. 2706; 61 ib. 172. Mr. Whitley's notice of motion (29th March, 1904) calling on the government to give time for the disposal of the remaining stages of a bill was privately ruled out of order as anticipating the adjourned debate on the motion for committing the bill to a standing committee, Notices of Motion, sess. 1904, p. 946. A motion for a select committee to consider the question of women's franchise was privately ruled out of order (21st Feb. 1895), as anticipating a bill upon the order book, while on the 4th March, 1903, the Speaker restricted the debate on a motion for a select committee to matters outside the scope of bills on the order book dealing with the same

subject, 118 Parl. Deb. 4 s. 1437.

<sup>2</sup> The fact that a bill has not been printed does not withdraw it from the operation of this rule, 341 H. D. 3 s. 762; 102 Parl. Deb. 4 s. 379. See also the Speaker's opinion regarding a proposed amendment, mentioned by Mr. Chamberlain in debate, with reference to Mr. Parnell's amendment on the address, 11th Jan. 1881, 136 C. J. 11, after notice had been given of the Protection of Person and Property (Ireland) Bill, 8 Parl. Deb. 4 s. 294.

<sup>3</sup> 207 H. D. 3 s. 500.

<sup>4</sup> 308 H. D. 3 s. 1755.

<sup>5</sup> 271 H. D. 3 s. 1290; 310 ib. 1830; 333 ib. 851-886; 66 Parl. Deb. 4 s. 922; 50 H. C. Deb. 5 s. 588.

<sup>6</sup> 351 H. D. 3 s. 933.

<sup>7</sup> 31 Parl. Hist. 149. 197; Campbell, Lives, vi. 271.

of bills and on some other occasions the motion is put directly as a question. In the Commons, when the motion has been seconded, it merges in the question, which is proposed by the Speaker to the house and read by him; after which the house is in possession of the question, and must dispose of it in one way or another before it can proceed with any other business. At this stage of the proceeding the debate upon the question arises in both houses. The mode in which the determination of the house upon a question is expressed and collected is explained hereafter (see p. 255).

With-  
drawal of  
motions  
and  
amend-  
ments.

The member who has proposed a motion can only withdraw it by leave of the house, granted without any negative voice. This leave is signified, not upon question, as is sometimes erroneously supposed, but by the Speaker taking the pleasure of the house. He asks, "Is it your pleasure that the motion be withdrawn?" If no one dissents, he says, "The motion is withdrawn:" but if any dissentient voice be heard, he proceeds to put the question. An amendment can be withdrawn in the same way,<sup>1</sup> but neither a motion nor an amendment can be withdrawn in the absence of the member who moved it.<sup>2</sup> Occasionally a motion<sup>3</sup> or amendment<sup>4</sup> is, by leave, withdrawn, and another motion or amendment substituted, in order to meet the views of the house, as expressed in debate: but that course can only be taken with the general assent of the house. Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn or negatived<sup>5</sup>; as the question on the amendment stands before the original question.

Question  
super-  
seded.

The modes of evading or superseding a question are by adjournment of the house,<sup>6</sup> by moving the previous question (see p. 252) and by amendment.

<sup>1</sup> In asking leave to withdraw, a member is not entitled to make a speech, 162 Parl. Deb. 4 s. 255; 164 ib. 803; 76 H. C. Deb. 5 s. 1219.

<sup>2</sup> 151 H. D. 3 s. 952; 159 ib. 1310; 186 ib. 887; 247 ib. 841; 73 H. C. Deb. 5 s. 1792.

<sup>3</sup> 212 H. D. 3 s. 219; 132 C. J. 301; 150 ib. 48; 171 ib. 199, 85 H. C. Deb. 5 s. 2647.

<sup>4</sup> 91 H. D. 3 s. 1236; 148 C. J. 360. An amendment has been withdrawn after the words proposed to be left out of the original question have been negatived and

the question for adding the words of the amendment has been proposed, 137 C. J. 172.

<sup>5</sup> 86 C. J. 913; 227 H. D. 3 s. 787; 230 ib. 1026; 125 C. J. 270; 150 ib. 48.

<sup>6</sup> The motion, "That the orders of the day be read," is obsolete as a substantive motion; though it survives in the form of an amendment, "That this house do pass to the orders of the day," moved upon a motion interposed before the ordinary business of the day, such as a privilege motion, 133 C. J. 196; 142 ib. 358.



In the midst of the debate upon a question any member may move, "That this house do now adjourn," not by way of amendment to the original question, but as a distinct question, which interrupts and supersedes that already under consideration. It need scarcely be explained that such a motion cannot be made while a member is speaking, but can only be offered by a member who, on being called by the Speaker in the course of the debate, is in possession of the house. If this second question be resolved in the affirmative, the original question is superseded; the house must immediately adjourn and all the business for that day is at an end.<sup>1</sup> In the Lords, a future day may be specified in the motion for adjournment,<sup>2</sup> but in the Commons, the motion for adjournment, in order to supersede a question, must be simply that the house do *now* adjourn, and cannot be coupled with any prefatory words;<sup>3</sup> nor is it allowable to move that the house do adjourn to any future time specified, or to move an amendment to that effect to the question for adjournment.<sup>4</sup> A motion for the adjournment of the debate, upon a question for the adjournment of the house, being an obvious solecism, will not be entertained;<sup>5</sup> nor can a motion for the adjournment of the house be made while a question for the adjournment of the debate is under discussion.<sup>6</sup> The house may also be adjourned, except between a quarter-past eight and a quarter-past nine o'clock, if a count of the house, which may be called for while a member is speaking, shows that forty members are not present (see p. 207). If the original question has not been proposed to the house by the Speaker, it is not entered in the votes, as the house has not been put in possession of the question before the adjournment: but if the question has been proposed from the chair, the question, having been entered on the minutes, is of course printed in the votes. If the proceeding superseded by adjournment be a motion, to bring the matter again before the house, a notice of the motion must be renewed (see p. 236); if an order of the day is so superseded, the order of the day must be revived (see p. 234).

When a motion for adjournment has been negatived, it may not be proposed again without some intermediate proceeding;<sup>7</sup>

Motions  
for ad-  
journing  
the house  
and the  
debate.

<sup>1</sup> 110 C. J. 367; 115 ib. 393.

<sup>2</sup> 113 L. J. 72.

<sup>3</sup> 353 H. D. 3 s. 1246.

<sup>4</sup> 2 Hatsell, 113.

<sup>5</sup> 144 H. D. 3 s. 1906; 146 Parl. Deb. 5 s. 1294.

<sup>6</sup> 260 H. D. 3 s. 1617.

<sup>7</sup> 2 Hatsell, 109, n.; Colchester, ii. 129.

hence arises the practice of moving alternately, "That this house do now adjourn," and "That the debate be now adjourned."<sup>1</sup> A member who has moved the adjournment of the house is not entitled to move the adjournment of the debate, as he has already spoken to the main question.<sup>2</sup> The latter motion, if carried, merely defers the decision of the house, while the former, as already explained, supersedes the question altogether; and therefore members who only desire to postpone the debate to another day, should refrain from voting for an adjournment of the house, as that motion, if carried, would supersede the question which they may be prepared to support.<sup>3</sup> If, at the moment for the interruption of business under the standing orders (see p. 198), a motion for the adjournment of the house or of the debate has been proposed from the chair, such motion lapses without question put pursuant to the provision in standing order No. 1. Other restrictions placed upon the use of these motions, for purposes of obstruction, are treated among the rules of debate<sup>4</sup> (see p. 282).

S. O. 1,  
Appendix  
I.

Previous  
question.

The object of the previous question is to withhold from the decision of the house a motion that has been proposed from the chair, by a motion which compels the house to decide, in the first instance, whether the original motion shall or shall not be submitted to the vote of the house. In the Lords the Lord Speaker puts the question, "whether the original question be *now* put."<sup>5</sup> In the Commons the question proposed on this motion is, "That that question be *not now* put;"<sup>6</sup> and, if it be resolved in the affirmative, the Speaker is prevented from putting the original question, as the house has thus refused to allow it to be put. The original motion may, however, be brought forward again on another day, as the decision of the house merely binds the Speaker not to put the question thereon at that time. If the previous question be resolved in the negative, the original question on which it was moved must be put forthwith,

<sup>1</sup> See proceedings, 23rd Nov. 1819, 41 H. D. 1 s. 130; 106 C. J. 216; 112 ib. 263; 117 ib. 388; 136 ib. 49-51.

<sup>2</sup> 184 H. D. 3 s. 1450.

<sup>3</sup> An instance of this occurred on the 23rd March, 1848, on a motion relative to the game laws, 97 H. D. 3 s. 963; and again on the 2nd March, 1875, on Mr. Fawcett's motion relating to education in rural districts, 222 ib. 1122.

<sup>4</sup> See Mr. Speaker's evidence before committees on public business, 1848,

1854, Parl. Pap. (H. C.) sess. 1847-8, No. 644 (O. 17 of sess. 1861, p. 1), sess. 1854, No. 212, p. 44, and Report of Committee on Public Business, 1857, Parl. Pap. (H. C.) sess. 1857 (2), No. 261, p. iii.

<sup>5</sup> 71 L. J. 581; 74 ib. 87; 110 ib. 22. This form of previous question was used by the Commons, 6th Sept. 1641, 2 C. J. 281.

<sup>6</sup> 146 C. J. 96; 148 ib. 631; 160 ib. 3. 53. The Speaker, with the concurrence of the house, first put the previous

no amendment, debate or motion for adjournment being allowed, because, as the house has negatived the proposal, "That that question be *not now* put," the question must be put at once to the vote.

The previous question has been moved upon the various stages of a bill,<sup>1</sup> but it cannot be moved upon an amendment;<sup>2</sup> though, after an amendment has been agreed to, the previous question can be moved on the main question as amended.<sup>3</sup> The previous question cannot be moved upon a motion relating to the transaction of public business or the meeting of the house,<sup>4</sup> or in any committee<sup>5</sup> (see pp. 409, 419, 442, *n.*). The motion for the previous question cannot be amended. It may be, however, superseded by a motion for adjournment, and debate thereon may be adjourned.<sup>6</sup>

The general practice in regard to amendments is explained on p. 258: but here such amendments only will be mentioned as are intended to evade an expression of opinion upon the main question by entirely altering its meaning and object. This is effected by moving the omission of all the words of the question after the word "that" at the beginning and by the substitution of other words of a different import. If this amendment be agreed to by the house, it is clear that no opinion is expressed directly upon the main question, because it is determined that the original words shall not stand part of the question; and the sense of the house is afterwards taken directly upon the substituted words, or practically upon a new question. There are many precedents of this mode of dealing with a question:<sup>7</sup> but the best known in parliamentary history are those relating to Mr. Pitt's administration and the Peace of Amiens, in 1802. On the 7th May, 1802, a motion was made

question in these words, 20th March, 1888, 143 *ib.* 112, because the motion, "That the question be now put," is akin to the closure motion (see p. 313). The new form of motion also enables the members who support the previous question to vote "aye," when that question is put from the chair. For illustrations of the former practice, see 2 Hatsell, 122, *n.*; Lex. Parl. 292; 115 C. J. 316; Sidmouth, ii. 136; Eldon, i. 232.

<sup>1</sup> 1 C. J. 226. 825; 7 *ib.* 420; 8 *ib.* 421; 30 *ib.* 418; 99 *ib.* 504; 113 *ib.* 220; 116 *ib.* 103. 135. 177; 130 *ib.* 356; 135 *ib.* 261, &c.

<sup>2</sup> 2 Hatsell, 116.

<sup>3</sup> Previous question moved, after amendments proposed and negatived, 117 C. J. 129; 118 *ib.* 269. Previous question moved to main question as amended, 94 *ib.* 496. See also 119 *ib.* 45. 179, 174 H. D. 3 s. 1376; 120 C. J. 117; 212 H. D. 3 s. 926.

<sup>4</sup> Speaker's private ruling, 30th May, 1892.

<sup>5</sup> The report of the committee on privilege (Mr. Gray), 1882, was re-committed to enforce this rule, 137 C. J. 509.

<sup>6</sup> 131 C. J. 45, &c.

<sup>7</sup> 24 C. J. 650; 30 *ib.* 70; 52 *ib.* 203; 93 *ib.* 418; 122 *ib.* 116; 133 *ib.* 240, &c.

in the Commons for an address, "expressing the thanks of this house to his Majesty for having been pleased to remove the Right Hon. W. Pitt from his councils;" upon which an amendment was proposed and carried, which left out all the words after the first, and substituted others in direct opposition to them, by which the whole policy of Mr. Pitt was commended. Immediately afterwards an address was moved in both houses of Parliament condemning the Treaty of Amiens in a long statement of facts and arguments; and in each house an amendment was substituted, whereby an address was resolved upon which justified the treaty.<sup>1</sup> This practice has often been objected to as unfair; but the objection is unfounded, as the weaker party must always anticipate defeat, in one form or another. If no amendment be moved, the majority can negative the question itself, and affirm another in opposition to the opinions of the minority. On the very occasion already mentioned, of the 7th May, 1802, after the address of thanks for the removal of Mr. Pitt had been defeated by an amendment, a distinct question was proposed and carried by the victorious party, "That the Right Hon. W. Pitt has rendered great and important services to his country, and especially deserves the gratitude of this house."<sup>2</sup> Thus, if no amendment had been moved, the position of Mr. Pitt's opponents would have been but little improved, as the majority could have affirmed or denied whatever they pleased. It is in debate alone that a minority can hope to compete with a majority. The forms of the house can ultimately assist neither party: but, so far as they offer any intermediate advantage, the minority have the greatest protection in forms, while the majority are met by obstructions to the exercise of their will.

Consideration of questions interrupted.

These are the modes by which a question may be intentionally avoided or superseded: but the consideration of a question is also liable to casual interruption and postponement from other causes, which are described on p. 240.

Complicated questions.

The ancient rule that when a complicated question is proposed to the house, the house may order such question to be divided, is observed in the following manner. When two or more separate

<sup>1</sup> 57 C. J. 419. 450; 36 Parl. Hist. 598-654. 686; 3 Stanhope's Pitt, 375-379; 43 L. J. 603.

<sup>2</sup> A case precisely similar occurred on the 14th May, 1806, when, a vote of

censure on Earl St. Vincent's naval administration having been negatived, a vote of approbation was immediately moved by Mr. Fox, 7 H. D. 1 s. 208.

propositions are embodied in a motion or in an amendment, the Speaker calls the attention of the house to the circumstance; and, if objection be taken,<sup>1</sup> he puts the question on such propositions separately, restricting debate to each proposition in its turn; <sup>2</sup> though this course is rarely adopted, because it is generally recognized that, if a motion formed of a series of paragraphs is submitted to the house, the question should be proposed on the principal paragraph, which determines the decision of the house upon the various proposals contained in the whole motion. If the necessity should arise, separate subjects contained in a motion can be placed *seriatim* before the house by way of amendment.

When debate on a question is closed,<sup>3</sup> the question must be put, which is done in the following manner. The Speaker, rising from the chair,<sup>4</sup> states or reads the question to the house beginning with "The question is, that." This form of putting the question is always observed, and precedes (or is supposed to precede) every vote of the house, except in cases where a vote is a formal direction in virtue of previous orders.<sup>5</sup>

In the Lords, when the question has been put, the Speaker says, "As many as are of that opinion say, 'Content,'" and "As many as are of a contrary opinion say, 'Not content;'" and the respective parties exclaim, "Content," or "Not content," according to their opinions. In the Commons the Speaker takes the sense of the house by desiring that "As many as are of that opinion say, 'Aye,'" and "As many as are of the contrary opinion say, 'No.'"

<sup>1</sup> Such objection is not permissible on motions relating to the business of the house, see p. 239, or in committee of the whole house, see p. 412.

<sup>2</sup> 324 H. D. 3 s. 1828. See also Mr. Speaker's remarks, 149 Parl. Deb. 4 s. 897; 43 H. C. Deb. 5 s. 1994. For references to the ancient and obsolete practice by which a complicated question was divided by order of the house, see 2 C. J. 43; 32 ib. 710; 33 ib. 89; 34 ib. 330; 35 ib. 217 (a question divided into five); 17 Parl. Hist. 429; 2 Hatsell, 118; see also 1 Cav. Deb. 460-475; 2 Woodfall's Junius, 139; 22 L. J. 73; 24 ib. 466. 467; 4 Timberland, 392.

<sup>3</sup> Debate was, on a memorable occasion, closed by the action of Mr. Speaker Brand, who, on the morning of Wednesday, 2nd Feb. 1881, when the house had

held a continuous sitting from the previous Monday, put the question on the motion for leave to bring in the Protection of Person and Property (Ireland) Bill, although members were desirous of continuing the debate, 136 C. J. 50.

<sup>4</sup> On the 9th April, 1866, the Speaker, on returning to the house after an illness, said that he should claim the indulgence of sitting while putting the questions, 121 C. J. 197.

<sup>5</sup> Order, "that nothing pass by order of the house without a question, and that no order be without a question, affirmative and negative" (1614), 1 C. J. 464. Resolved, "that when a general vote of the house concurrereth in a motion propounded by the Speaker, without any contradiction, there needeth no question" (1621), ib. 650.

On account of these forms the two parties are distinguished in the Lords as "contents" and "not contents" and in the Commons as "ayes" and "noes." When each party have exclaimed according to their opinion, the Speaker endeavours to judge from the loudness and general character of the opposing exclamations, which party have the majority. As his judgment is not final, he expresses his opinion thus: "I think the ('contents,' or) 'ayes' have it;" "I think the ('not contents,' or) 'noes' have it." If the house acquiesce in this decision, the question is said to be "resolved in the affirmative" or "negative," according to the supposed majority on either side: but if the party thus declared to be the minority dispute the fact, they say, "The 'contents' (or 'not contents'), the 'ayes' (or 'noes') have it," as the case may be. In this case the Speaker puts the question a second time, in order that the numbers may be counted by the process which is termed a division (see p. 324).

Voices on  
the ques-  
tion.

Members must bear in mind that their opinion is collected from their voices in the house, and not merely by a division; and that, if their voices and their votes should be at variance, the voice will bind the vote. A member therefore who gave his voice with the "ayes" (or "noes") when the Speaker took the voices, is bound to vote with them.<sup>1</sup> On the report of the Holyrood Park Bill, 10th August, 1843, a member called out with the "noes," "The 'noes' have it," and thus forced that party to a division, although he was about to vote with the "ayes" and went out into the lobby with them. On his return and before the numbers were declared by the tellers, Mr. Brotherton addressed the Speaker, sitting and covered (the doors being closed), and claimed that the member's vote should be reckoned with the "noes." The Speaker put it to the member whether he had said, "The 'noes' have it;" to which he replied that he had, but without any intention of voting with the "noes." The Speaker, however, would not admit of his excuse, but ordered that his vote should be counted with the "noes," as he had declared himself with them in the house. This decision has been repeated on subsequent occasions<sup>2</sup> and the Speaker

<sup>1</sup> Practice on this point was formerly unsettled. It was debated in the house, 29th Feb. 1796. Mr. Pitt maintained that a member was at liberty to force his opponents to a division; whilst the Speaker pronounced such conduct to be "unbecoming and contrary to the rules

and practice of Parliament," 2 Hatsell, 199, n.; Colchester, i. 38. The debate is not to be found in Parl. Hist.

<sup>2</sup> 109 C. J. 373; 119 ib. 359, 176 H. D. 3 s. 235; 161 C. J. 241, 158 Parl. Deb. 4 s. 1052; 167 C. J. 378, 42 H. C. Deb. 5 s. 2133.

has condemned this practice of forcing a division as "irregular and unparliamentary."<sup>1</sup> The objection that a member's vote was contrary to his voice should be taken either before the numbers are reported by the tellers or immediately afterwards; it will not be entertained after the declaration of the numbers from the chair (see p. 327).<sup>2</sup>

It would seem, however, that by the ancient rules of the house, a member was at liberty to change his opinion upon a question. The Journal of the 1st May, 1606, records : A member changing his opinion.

"A question moved, whether a man saying 'yea' may afterwards sit and change his opinion. A precedent remembered in 39 Eliz., of Mr. Morris, attorney of the Court of Wards, by Mr. Speaker, that changed his opinion. Misliked somewhat, it should be so; yet said that a man might change his opinion."<sup>3</sup>

A member who has made a motion is afterwards entitled to vote against it, provided he gives his voice with the "noes" when the question is put from the chair.<sup>4</sup>

Every question, when agreed to, assumes the form either of an order or a resolution of the house. By its orders the house directs its committees, its members, its officers, the order of its own proceedings and the acts of all persons whom they concern; by its resolutions the house declares its own opinions and purposes. Orders and resolutions are sometimes declared to have been agreed to *nemine dissentiente* in the House of Lords and *nemine contradicente* in the House of Commons. Entries to this effect are made in the case of addresses of congratulation or condolence to the reigning sovereign<sup>5</sup> and of messages of a similar character to other members of the royal family.<sup>6</sup> They have also been used in the House of Commons in the case of resolutions condemning a breach of privilege and the consequential order for the attendance of the offenders.<sup>7</sup> Votes of thanks,<sup>8</sup> a resolution of the house,<sup>9</sup> the grant of a vote of credit<sup>10</sup> and the third reading of a bill have been similarly recorded.<sup>11</sup> The addition of these words is made on the direction of the Speaker or chairman, who does not assent to the application for their use if a single dissentient voice is raised.<sup>12</sup>

<sup>1</sup> 183 H. D. 3 s. 1919.

<sup>2</sup> 141 H. D. 3 s. 1103.

<sup>3</sup> 1 C. J. 303.

<sup>4</sup> 227 H. D. 3 s. 473; 25th July, 1879, Sir H. Selwin Ibbetson, in committee of supply, Votes, p. 697.

<sup>5</sup> 133 L. J. 8, 156 C. J. 6.

<sup>6</sup> 92 C. J. 493; 165 ib. 153.

<sup>7</sup> 156 C. J. 414, 418.

<sup>8</sup> 111 C. J. 186.

<sup>9</sup> 160 C. J. 95.

<sup>10</sup> 169 C. J. 426.

<sup>11</sup> 10 C. J. 280; 112 ib. 110; 139 ib. 321.

<sup>12</sup> 289 H. D. 3 s. 1561; 178 Parl. Deb. 4 s. 463.

## CHAPTER X.

AMENDMENTS TO QUESTIONS, AND AMENDMENTS TO  
PROPOSED AMENDMENTS.

Objects  
and  
principle  
of an  
amend-  
ment and  
debate  
thereon.

THE object of an amendment may be to effect such an alteration in a question as will obtain the support of those who, without such alteration, must either vote against it or abstain from voting thereon, or to present to the house an alternative proposition either wholly or partially opposed to the original question. This may be effected by moving to omit all the words of the question after the first word, "That," and to substitute in their place other words of a different import (see p. 253). In that case the debate that follows is not restricted to the amendment, but includes the motive of the amendment and of the motion, both matters being under the consideration of the house as alternative propositions. If the amendment be to leave out or to add words only, debate should be restricted to the desirability of the omission or the addition of those words. The confusion which must arise from any irregularity in the mode of putting amendments is often exemplified at public meetings, where fixed principles and rules are not observed; and it would be well for persons in the habit of presiding at meetings of any description to make themselves familiar with the rules of Parliament in regard to questions and amendments, which, tested by long experience, are as simple and efficient in practice as they are logical in principle.<sup>1</sup>

When  
notice of  
amend-  
ments is  
necessary.

Previous notice of a matter brought before the house by way of amendment is, as a rule, unnecessary and an amendment which appears upon the paper can be moved by any member entitled to speak to the question before the house, if the member who gave notice of the amendment does not rise and move the same. When, however, notice of an amendment is required (see p. 220), as, for instance, of amendments on going into committee of supply (p. 475),

<sup>1</sup> Mr. Reginald Palgrave has done good service in this respect, by the publication of "The Chairman's Handbook." —*Author's Note.*



of clauses on the consideration of a bill by the house (p. 380), of the names of members to be nominated by way of amendment on a select committee (p. 426), and, under certain conditions, of an amendment to an instruction (p. 367), the amendment can be moved only by the member in whose name it stands upon the notice paper.<sup>1</sup>

The time for moving an amendment is after a question has been proposed by the Speaker, and before it has been put. A member who has given notice of an amendment is not entitled to precedence on that account or to be heard before a member who rises to speak to the question.<sup>2</sup> According to the rules of debate, the member who first rises and is called by the Speaker, being in possession of the house, is entitled to conclude with any motion which may properly be made at that time. Nor, though a contrary practice prevails in proceedings on a bill (see p. 369), if a series of amendments are proposed to a motion, can members claim, unless they rise to speak, to be called in the order in which their notices stand upon the notice paper (see p. 476). The order and form in which the points arising out of amendments are determined are as follows:—

An amendment may be made to a question, by leaving out certain words, by leaving out certain words in order to insert or add others, and by inserting or adding certain words.

When the proposed amendment is to leave out certain words, the Speaker says, "The original question was this," stating the question at length, "Since which, an amendment has been proposed to leave out the words," which are proposed to be omitted. He then puts the question, "That the words proposed to be left out stand part of the question." If that question be resolved in the affirmative, it shows that the house prefers the original question to the amendment and the question, as first proposed, is put by the Speaker. If, however, the question, "That the words stand part of the question," be negatived, the question is put with the omission of those words, unless another amendment be then moved for the insertion or addition of other words.

When the proposed amendment is to leave out certain words in order to insert or add others, the proceeding begins in the same manner as the last. If the house resolves, "That the words

Order in  
moving  
amend-  
ments.

Modes of  
amend-  
ment.

Amend-  
ment to  
leave out  
words.

Amend-  
ment to  
leave out  
words  
and to in-  
sert or add  
others.

<sup>1</sup> 9 Parl. Deb. 4 s. 1663.

<sup>2</sup> 84 H. D. 3 s. 641; 163 ib. 1424.  
1486; 246 ib. 265; 250 ib. 80; 232 ib.  
1869.

<sup>3</sup> It is not competent to move to leave out all the words of a question. The initial word "that" must, at least, be retained.

proposed to be left out stand part of the question," the original question is put: but if it resolves that such words shall not stand part of the question, by negating that proposition when put, the next question proposed is that the words proposed to be substituted be inserted or added instead thereof. This latter question being resolved in the affirmative, the main question, so amended, is put.

Procedure when the question and amendment are both objected to.

It is sometimes erroneously supposed that a member, who is adverse both to the original question and to the proposed amendment, would express an opinion favourable to the question by voting "That the words proposed to be left out stand part of the question." By such a vote, however, he merely declares his opinion to be adverse to the amendment.<sup>1</sup> After the amendment has been disposed of, the question itself remains to be put, upon which each member votes as if no amendment whatever had been proposed. If, however, he be equally opposed to the question and to the amendment, it is quite competent for him to vote with the "noes" on both. A misunderstanding, however, sometimes arises in the application of this rule. On Tuesday, 9th March, 1886, on a motion of Mr. Dillwyn, condemning the continuance of the Church of England in Wales, an amendment was moved by Mr. Albert Grey, when the government and other members, being equally opposed to the motion and the amendment, voted that the words proposed to be left out should stand part of the question, intending to vote against the main question when proposed. They accordingly went into the lobby with the supporters of the original motion who were defeated by a small majority of 12 (ayes 229, noes 241). This was generally represented, in the press, as a near approach to the success of the principle of disestablishment: but when the question, with the amendment added, was put to the vote, it was negatived by a very large majority (ayes 49, noes 346).<sup>2</sup>

Questions mutilated by amendments.

On the 19th June, 1822, the house, having struck out all the words after "That" of a question relative to tithes in Ireland, an amendment to add other words was superseded by the house passing to the other orders of the day; and the original question was thus left, reduced to the initial word "That."<sup>3</sup> On the 8th December, 1857, a majority of the house being adverse to a motion relating to joint-stock banks and also to a proposed amendment, the original question was ultimately reduced to the word "That;"

<sup>1</sup> 191 H. D. 3 s. 708.

<sup>2</sup> 141 C. J. 85. See also 141 ib. 106.

<sup>3</sup> 77 C. J. 356.

when, no other amendment being proposed, the Speaker called upon the member whose notice stood next upon the paper.<sup>1</sup> On the 21st June, 1870, a motion being made "That it is undesirable that opposed business should be proceeded with after twelve o'clock," an amendment was proposed to leave out "twelve" and insert "one." Upon division, the house resolved, first, that "twelve" should not stand part of the question; and secondly, that "one" should not be inserted. The question thus stood with a blank, which no one proposed to fill up with any other words; when the house was relieved from its embarrassment by the withdrawal of the original motion.<sup>2</sup>

In the case of an amendment to insert or add words the proceeding is more simple. The question is merely put that the proposed words "be there inserted" or "added." If it be carried, the words are inserted or added accordingly and the main question, so amended, is put: but if negatived, the question is put as it originally stood,<sup>3</sup> unless it be afterwards proposed to insert or add other words.

It is an imperative rule that every amendment must be relevant to the question on which the amendment is proposed.<sup>4</sup>

Every amendment proposed to be made, either to a question or to a proposed amendment, should be so framed that, if agreed to by the house, the question or amendment, as amended, would be intelligible and consistent with itself.

Various considerations that render amendments out of order have been already described (see pp. 239, 248). An amendment is also out of order if it is inconsistent with words in the motion which have been already agreed upon.<sup>5</sup> The Speaker has also ruled that an amendment that was merely an expanded negative, or otherwise irregular in form, could not be proposed from the chair.<sup>6</sup>

<sup>1</sup> 113 C. J. 10. See also 131 ib. 139; 132 ib. 40; 135 ib. 60. 74; 136 ib. 163; 137 ib. 172; 138 ib. 10; 140 ib. 72.

<sup>2</sup> 125 C. J. 270.

<sup>3</sup> 113 C. J. 201.

<sup>4</sup> 120 Parl. Deb. 4 s. 806; 121 ib. 506; 144 ib. 1497. This principle was asserted for the first time in the 9th edition, p. 325; 70 H. D. 3 s. 213; 266 ib. 1846; 269 ib. 461. An illustration may be given of the former licence in amendments. To the question for the Speaker's leaving the chair for the committee on the Reform Bill, 6th Aug. 1831, an amendment was moved for the production of papers

on the state of Poland; and on an analogous proceeding, 9th May, 1834, the Speaker stated "that, according to the forms of the house and the law of Parliament, there was no necessity that an amendment should be akin to the question," 86 C. J. 758; 89 ib. 271, 23 H. D. 3 s. 785.

<sup>5</sup> 284 H. D. 3 s. 98; 310 ib. 1800; 311 ib. 965.

<sup>6</sup> 136 C. J. 26; 9 Parl. Deb. 4 s. 456; 146 ib. 991; 167 ib. 475. For an amendment negativing the first part of a motion, see 157 C. J. 492. For a case in which the Speaker has declined, on the ground

Amendment to insert or add words.

Amendments to be relevant.

Amendments to be intelligible.

Restrictions on amendments.

Amend-  
ment to  
words  
before  
those  
under  
consider-  
ation out  
of order.

Several amendments may be moved to the same question, but subject to these restrictions. No amendment can be made in the first part of a question, after the latter part has been amended, or has been proposed to be amended, if a question has been proposed from the chair upon such amendment: but if an amendment to a question be withdrawn, by leave of the house, the fact of that amendment having been proposed will not preclude the proposal of another amendment, affecting an earlier part of the question, so long as it does not extend further back than the last words upon which the house has already expressed an opinion; for the withdrawal of the first amendment leaves the question in precisely the same condition as if no amendment had been proposed. Each amendment should be proposed in the order in which, if agreed to, it would stand in the amended question;<sup>1</sup> and should a member be in the act of moving an amendment, another member, before the question upon such amendment has been proposed from the chair, may intimate his wish to move an amendment to an earlier part of the question, and that wish may be carried out, if the member, who is in possession of the house, consents to resume his seat.<sup>2</sup> If the question has been already proposed from the chair upon an amendment, no other amendment can be moved, unless the first be, by leave of the house, withdrawn.

Amend-  
ment to  
words  
ordered to  
stand part  
of ques-  
tion out  
of order.

When the house has agreed that certain words shall stand part of a question, it is irregular to propose any amendment to those words, as the decision of the house has already been pronounced in their favour: but this rule does not exclude an addition to the words, if proposed at the proper time.<sup>3</sup> In the case of a second reading or other stage of a bill, however, it is not allowable to add words to the question, after the house has decided that the words proposed to be left out should stand part of that question. Every stage of a bill, being founded upon a previous order of the house, is passed by means of a recognized formula and may be postponed or arrested by acknowledged forms of amendment: but when any such amendment has been negatived, no other amendment by way of

of informality revealed during debate, to put the question upon an amendment which had been proposed, see 257 H. D. 3 s. 1040. See also p. 372.

<sup>1</sup> 2 Hatsell, 123.

<sup>2</sup> 319 H. D. 3 s. 1475; 4 Parl. Deb. 4 s. 1961. When two members who pro-

posed to move amendments rose almost simultaneously, although his call had been given to the other member, the Speaker gave priority of speech to the mover of the prior amendment, notice having been given thereof, 14 ib. 483.

<sup>3</sup> 65 C. J. 480; 129 ib. 52; 138 ib. 191.

addition to the question can be proposed, which is not, in some degree, inconsistent with the previous determination of the house; and it has, therefore, never been permitted.<sup>1</sup> An amendment cannot be made, by the addition of words, to the question for reading a bill a second time. The same rule applies to the question for the Speaker's leaving the chair on going into committee of supply.<sup>2</sup> In like manner an established form of amendment, such as the "six months" formula used to obtain the rejection of a bill (see p. 357), is not capable of amendment.<sup>3</sup>

When the house has agreed to add or insert words in a question, its decision may not be disturbed by any amendment of those words: but here again other words may be added. Such words, however, may not be to the same effect as those omitted by the amendment.

The principle applied to amendments to the questions proposed on the stages of a bill, namely, that established forms of procedure can only be dealt with by recognized forms of amendment, is also applied to motions for adjournment; for just as motions for the adjournment of the house or of the debate,<sup>4</sup> moved as dilatory motions (see p. 251), cannot be amended, so to a motion that the house at its rising do adjourn till a future day no amendment is permissible unless it relates to the term of the adjournment.<sup>5</sup> When to the question of adjournment from Friday till Monday an amendment was proposed relating to a day of thanksgiving on the restoration of peace, the Speaker ruled the amendment to be out of order, as the only amendment which could be moved was that the house should adjourn to some other day than Monday.<sup>6</sup>

When a member desires to move an amendment to a part of the question proposed to be omitted by another amendment or to alter words proposed to be inserted, it is sometimes arranged that only the first part of the original amendment shall be formally proposed, in the first instance, so as not to preclude the consideration of the second amendment.<sup>7</sup> This course, which is followed in committees

Amendment to words added to, or inserted in question, out of order. No amendment admissible to question of adjournment, except as to time.

Arrangement on taking amendments.

<sup>1</sup> 183 H. D. 3 s. 1918; 186 ib. 1285; 240 ib. 1602; 347 ib. 743.

<sup>2</sup> On the same principle an amendment to a motion of thanks for a sermon preached before the house has been ruled out of order, 50 Parl. Deb. 4 s. 979.

<sup>3</sup> 334 H. D. 3 s. 929.

<sup>4</sup> A motion for the adjournment of a debate to a day named has been refused

by the Speaker, 64 H. C. Deb. 5 s. 906.

<sup>5</sup> An amendment has been moved to alter the hour of meeting on the day proposed for re-assembling, 169 C. J. 132.

<sup>6</sup> 141 H. D. 3 s. 1541; 242 ib. 2076.

<sup>7</sup> When the question upon an amendment to leave out a series of words is put in the form that the earlier words proposed to be left out stand part and is

on bills (see p. 369), is resorted to in the house only on the consideration of a bill on report or of motions of an exceptional character relating to the business of the house.<sup>1</sup> In order to obtain freedom of discussion and amendment, the rule that no member may speak twice to the same question, save in committee (see p. 285), has also been relaxed, to enable members to speak first on the main question and subsequently to move amendments thereto, on the consideration of the rules of procedure,<sup>2</sup> and of motions for ensuring the completion at a prescribed time of the outstanding stages of a bill or other business<sup>3</sup> (see p. 318).

Amend-  
ments to  
proposed  
amend-  
ments.

Another proceeding may also be resorted to, by which an amendment is intercepted, as it were, before it is offered to the house in its original form, by moving to amend the first proposed amendment. In such cases the questions put by the Speaker deal with the first amendment as if it were a distinct question, and with the second as if it were an ordinary amendment. The original question is, indeed, for a time laid aside; and the amendment becomes, as it were, a substantive question itself. Unless this were done, there would be three points under consideration at once, viz. the question, the proposed amendment and the amendment of that amendment: but, when the question for adopting the words of an amendment is put forward distinctly and apart from the original question, no confusion arises from moving amendments to it, before its ultimate adoption is proposed.<sup>4</sup>

negatived, the whole amendment is held to have been agreed to, and the remaining words covered by the amendment are struck out without any further question being put, 162 C. J. 348, 178 Parl. Deb. 4 s. 1277.

<sup>1</sup> 114 Parl. Deb. 4 s. 604; 149 ib. 593. 897; 50 H. C. Deb. 5 s. 815.

<sup>2</sup> 243 H. D. 3 s. 1336; 250 ib. 1450; 274 ib. 246, 247, 252; 311 ib. 204, 207; 322 ib. 1252; 37 Parl. Deb. 4 s. 717; 67 ib. 309; 155 ib. 200, 217; 171 ib. 888. In session 1902 a general discussion of the proposed new rules of procedure was taken on a motion, "That the proposals of the government on the order paper relating to the procedure of the House be now considered," 102 Parl. Deb. 4 s. 548. The consideration of a sessional order is not exempted from the ordinary rules of debate, 89 Parl. Deb. 4 s. 1317; 98 ib. 1550.

<sup>3</sup> 315 H. D. 3 s. 1616; 14 Parl. Deb. 4 s. 366; 114 ib. 604; 159 C. J. 281; 160 ib. 293; 165 Parl. Deb. 4 s. 1271, 1293; 172 ib. 651, 654; 173 ib. 1385, 1451; 166 C. J. 106, 438. An amendment to limit the duration of speeches on the bill dealt with by the proposed motion has been ruled out of order, 32 H. C. Deb. 5 s. 849.

<sup>4</sup> It appears, from a curious letter of the younger Pliny (Plinii Epistolæ, lib. viii. ep. 14), that the Roman senate were perplexed in the mode of disentangling a question that involved three different propositions. It was doubtful whether the consul, Afranius Dexter, had died by his own hand or by that of a domestic; and if by the latter, whether at his own request or criminally; and the senate had to decide on the fate of his freedmen. One senator proposed that the freedmen ought not to be punished at all; another, that they should be banished; and a

Where the original amendment is either simply to insert, add, or leave out words, an amendment may at once be proposed to it, without reference to the question itself, which will be dealt with when the amendment has been disposed of. The most difficult form, perhaps, is when the amendment first proposed is to leave out certain words of the original question, and an amendment is proposed to such proposed amendment, by leaving thereout some of the words proposed to be omitted and thus, in effect, restoring them to the original question. In such a case a question is first put, that the words proposed to be omitted stand part of the proposed amendment. If that question be affirmed, the question is then put, that all the words proposed to be omitted by the first amendment stand part of the original question. But if it be negatived, a question is put, that the words comprised in the amendment, so amended, stand part of such original question.<sup>1</sup>

Amendment to proposed amendment. Adding, inserting or leaving out words.

Where the original amendment is to leave out certain words, in order to insert or add other words, no amendment can be moved to the words proposed to be substituted, until the house has resolved that the words proposed to be left out shall not stand part of the question. But so soon as the question is proposed for inserting or adding the words of the amendment, an amendment may be moved thereto.

Leaving out words and adding others.

A short example will make this latter proceeding more intelligible.

third, that they should suffer death. As these judgments differed so much, it was urged that they must be put to the question distinctly, and that those who were in favour of each of the three opinions should sit separately, in order to prevent two parties, each differing with the other, from joining against the third. On the other hand, it was contended that those who would put to death, and those who would banish, ought jointly to be compared with the number who voted for acquittal, and afterwards among themselves. The first opinion prevailed, and it was agreed that each question should be put separately. It happened, however, that the senator who had proposed death at last joined the party in favour of banishment, in order to prevent the acquittal of the freedmen, which would have been the result of separating the senate into three distinct parties. The mode of proceeding adopted by the senate was

clearly inconsistent with a determination by the majority of an assembly; being calculated to leave the decision to a minority of the members then present, if the majority were not agreed. The only correct mode of ascertaining the will of a majority is to put but one question at a time, and to have that resolved in the affirmative or negative by the whole body. The combinations of different parties against a third cannot be avoided (which after all was proved in the senate); and the only method of obtaining the ultimate judgment of a majority, and reconciling different opinions, is by amending the proposed question until a majority of all the parties agree to affirm or deny it, as it is ultimately put to the vote.—(Information supplied by the late Mr. Rickman.) See also Professor Long's *Plutarch's Life of Pompey*, p. 80.

<sup>1</sup> 27 C. J. 298; 39 ib. 842; 64 ib. 131; 134 ib. 136.

To avoid a difficult illustration (of which there are many in the journals <sup>1</sup>), let the simple question be, "That this bill be now read a second time;" to which an amendment has been proposed, to leave out the word "now," and add "upon this day six months;" and let the question, that the word "now" stand part of the question, be negatived and the question for adding "upon this day six months" be proposed. An amendment may then be proposed to such proposed amendment to leave out "six months" and add "fortnight" instead thereof. The question will then be put, "That the words 'six months' stand part of the said proposed amendment." If that be affirmed, the question for adding "upon this day six months" is put, and, if carried, the main question, so amended, is put, viz. "That this bill be read a second time upon this day six months." If it be resolved that "six months" shall not stand part of the proposed amendment, a question is put that "fortnight" be added; and, if that be agreed to, the first amendment, so amended, is put, viz. that the words "upon this day fortnight" be added to the original question. That being agreed to, the main question, so amended, is put, viz. "That this bill be read a second time upon this day fortnight."<sup>2</sup> Several amendments may be moved, in succession, to a proposed amendment—subject to the same rules as amendments to questions.<sup>3</sup> An amendment to a proposed amendment cannot be moved, if it proposes to leave out all the words of such proposed amendment: but in such a case the first amendment must be negatived before the second can be offered.<sup>4</sup>

<sup>1</sup> See Appendix III. and Journal General Indexes, tit. *Amendments*; 108 C. J. 516; 123 ib. 160.

<sup>2</sup> Dublin Waterworks Bill, 104 C. J. 98, 102 H. D. 3 s. 1314.

<sup>3</sup> 95 C. J. 153; 101 ib. 865; 134 ib. 136; 145 ib. 53.

<sup>4</sup> Education in rural districts (Mr. Pell and Mr. Wilbraham Egerton), 2nd March, 1875, 130 C. J. 70.



## CHAPTER XI.

### THE SAME QUESTION OR BILL MAY NOT BE TWICE OFFERED IN A SESSION.

It is a rule, in both houses, which is essential to the due performance of their duties, that no question or bill shall be offered that is substantially the same as one on which their judgment has already been expressed in the current session.<sup>1</sup> Object of the rule.

A resolution may, however, be rescinded,<sup>2</sup> and an order of the house discharged, notwithstanding a rule *urged* (2nd April, 1604), "That a question, being once made and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the house."<sup>3</sup> Technically, indeed, the rescinding of a vote is the matter of a new question; the form being to read the resolution of the house and to move that it be rescinded; and thus the same question which had been resolved in the affirmative is not again offered, although its effect is annulled. To rescind a negative vote, except on the different stages of bills, is a proceeding of greater difficulty, because the same question would have to be offered again. The only means, therefore, by which a negative vote can be revoked, is by proposing another question, similar in its general purport to that which has been rejected, but with sufficient variance to constitute a new question; and the house would determine whether it were substantially the same question or not. Resolutions rescinded.

A similar difficulty is encountered when it is desired to rescind an amendment that the house has made to a resolution. Thus on the 11th November, 1912, an amendment was made to a resolution reported from a committee of the whole house authorizing the financial provisions embodied in a bill. Subsequently the government

<sup>1</sup> 1 C. J. 306. 434. Cases when the Speaker has intervened to enforce this rule, 95 C. J. 495; 76 H. D. 3 s. 1021; 201 ib. 824; 214 ib. 287; 155 C. J. 139; 157 ib. 236; 163 ib. 225; 38 H. C. Deb. 5 s. 1754. For application of rule to a notice of motion which raised a question discussed on an amendment to the ad-

dress in the same session, see 35 H. C. Deb. 5 s. 1043.

<sup>2</sup> 89 C. J. 59; 119 ib. 463; 123 ib. 145. Resolution and judgment of House of Lords upon a Report from the committee of privileges, 146 L. J. 196. See also Colchester, ii. 9. 12.

<sup>3</sup> 1 C. J. 162.

desired to rescind this amendment and proposed to make a motion with that object before the consideration of the resolution, as amended, was resumed. Objection was taken to this mode of procedure, but the Speaker pointed out that, the amendment having been made, the house could not reconsider its decision on the further consideration of the resolution. The motion for rescission having been made, an amendment was proposed to the question affirming the principle that a question which has once passed in the affirmative or negative should not be again proposed or questioned in the same session. Upon this amendment a debate arose and the Speaker had to adjourn the house in consequence of grave disorder arising. On the following day, after the Speaker had addressed the house on the situation that had arisen on the previous day and the possibility of finding a solution of the difficulty that would be in accordance with old precedents, the amendment was not proceeded with. The resolution, as amended, was subsequently disagreed to and a new resolution differing from the original resolution was proposed in a committee of the whole house and agreed to, and the necessary amendments were made in due course in the bill.<sup>1</sup>

Discharge  
of order  
for an  
address to  
the Crown.

There is a difficulty in discharging an order for an address to the Crown, after it has been presented to the sovereign. Thus, in 1850, an address having been agreed to for discontinuing the collection and delivery of letters on Sunday and for inquiry into the subject, another address was agreed to, some time afterwards, for inquiring whether Sunday labour might not be reduced in the post-office, without completely putting an end to the collection and delivery of letters.<sup>2</sup> In 1856, when an address had been voted on the subject of national education in Ireland in which the majority of the house did not concur, instead of discharging the order for the address, a resolution was agreed to for the purpose of qualifying the opinions embodied in the address; and her Majesty's answer was framed in the spirit of the resolution, as well as of the address.<sup>3</sup>

Notice  
necessary  
to rescind  
a reso-  
lution.

Notice is required of a motion to rescind a resolution,<sup>4</sup> or to expunge or alter an entry in the "Votes and Proceedings."<sup>5</sup> This

<sup>1</sup> 167 C. J. 404. 408. 409. 410. 414. 416, 43 H. C. Deb. 5 s. 1993. 2090, 44 ib. 36. 121.

<sup>2</sup> 105 C. J. 383. 509.

<sup>3</sup> 111 C. J. 272. 289. 298; 111 H. D. 3 s. 1404.

<sup>4</sup> 313 H. D. 3 s. 1124.

<sup>5</sup> 271 H. D. 3 s. 1268; 294 ib. 1423; 7 H. C. Deb. 5 s. 2303. On the 27th June, 1884, a motion to omit "*Nem. Con.*" (see p. 257) from the entry in the "Votes" of the third reading of the Representation of the People Bill, was brought forward without notice as privilege, 139 C. J. 324.

rule, however, was not held to apply to a motion to rescind a resolution which affected the seat of a member, as being a matter of privilege, which arose out of the proceedings in which the house was then engaged: <sup>1</sup> but under no circumstances is it competent for the house to rescind a resolution during the sitting when the resolution was agreed to. <sup>2</sup>

Sometimes the house may not be prepared to rescind a resolution, but may be willing to modify its judgment by considering and agreeing to another resolution relating to the same subject. Thus, a resolution having been agreed to which condemned an official appointment, the house by a subsequent resolution withdrew the censure which the previous resolution had conveyed. <sup>3</sup> The effect of a resolution, by which the house determined that no legislation should be entertained, during the session, regarding traffic in intoxicating liquor, until provisions dealing with that subject had been placed before the house by the government, was modified by a subsequent resolution which declared that, as the house was made aware that the government did not intend to undertake legislation regarding the liquor traffic, the house was free to deal therewith. <sup>4</sup>

Modification of resolution by subsequent resolution.

A mere alteration of the words of a question, without any substantial change in its object, will not be sufficient to evade this rule. On the 7th July, 1840, Mr. Speaker called attention to a motion for a bill to relieve dissenters from the payment of church rates, before he proposed the question from the chair. <sup>5</sup> Its form and words were different from those of a previous motion, but the object was substantially the same; and the house agreed that it was irregular and ought not to be proposed from the chair. On the 15th May, 1860, the order for the second reading of the Charity Trustees bill was withdrawn, as it was discovered to be substantially the same as the Endowed Schools Bill, which the house had already put off for six months. <sup>6</sup> On the 17th May, 1870, a motion for an address in favour of emigration was not allowed to be made, as it was substantially the same as a resolution which had been negatived in the same session. <sup>7</sup> On the 9th May, 1882, it was ruled by Mr. Speaker that a motion, affirming the necessity of legislation

Application of the rule.

<sup>1</sup> 253 H. D. 3 s. 644.

<sup>2</sup> 138 H. D. 3 s. 1307.

<sup>3</sup> 132 C. J. 345. 367.

<sup>4</sup> 145 C. J. 214. 257, 343 H. D. 3 s. D. 3 s. 497.

<sup>5</sup> 95 C. J. 495, 55 H. D. 3 s. 553.

<sup>6</sup> 115 C. J. 249, Denison, 45.

<sup>7</sup> 201 H. D. 3 s. 824. See also 176 H.

to enable members duly elected to take their seats, was inadmissible, as an amendment to the same effect, but in different words, had been negatived on the 7th March.<sup>1</sup> It is possible, however, so far to vary the character of a motion as to withdraw it from the operation of the rule.<sup>2</sup> Thus, in the session of 1845, no less than five distinct motions were made upon the subject of opening letters at the post-office under warrants from the secretary of state. They all varied in form and matter, so far as to place them beyond the restriction: but in purpose they were the same and the debates raised upon them embraced the same matters.<sup>3</sup>

Appli-  
cation of  
rule to  
question  
decided  
upon an  
amend-  
ment.

The rule cannot be evaded by renewing, in the form of an amendment, a motion which has been already disposed of. On the 18th July, 1844, an amendment was proposed to a question by leaving out all the words after "that," in order to add, "Thomas Slingsby Duncombe, esq., be added to the committee of secrecy on the post-office:" but Mr. Speaker stated that, on the 2nd July, a motion had been made, "that Mr. Duncombe be one other member of the said committee;" that the question had been negatived; "and that he considered it was contrary to the usage and practice of the house that a question which had passed in the negative should be again proposed in the same session." The amendment was consequently withdrawn.<sup>4</sup> Nor can a proposal contained in an amendment, which has been practically negatived by a decision of the house, whereby it was determined that the words of the original motion, on which that amendment was moved, shall "stand part of the question," be again submitted to the house during the same session.<sup>5</sup>

Motions  
with-  
drawn  
may be  
repeated.

A motion which has been withdrawn or has not been seconded, has not been submitted to the judgment of the house and may therefore be repeated.<sup>6</sup>

Motions  
super-  
seded may  
be re-  
peated.

The same course has been followed in the case of motions which have been superseded. On the 8th December, 1857, a resolution

<sup>1</sup> 269 H. D. 3 s. 340. See also Parliamentary Affirmation, 253 ib. 1266; Mr. O'Donnell's Suspension, 261 ib. 1985; Railway Servants (Hours of Labour), 349 ib. 1176.

<sup>2</sup> See, for example, General Conway's motions on the American war, 22nd and 27th Feb. 1782, 38 C. J. 814. 861; proceedings upon the malt duty in 1833, 88 ib. 195. 317; and upon the sugar duties

in 1845, 100 ib. 59. 69. 81.

<sup>3</sup> 100 C. J. 42. 54. 185. 199. 214.

<sup>4</sup> 76 H. D. 3 s. 1021.

<sup>5</sup> Business of the house, 214 H. D. 3 s. 287; 303 ib. 1708.

<sup>6</sup> See motion on Railway Bills withdrawn 16th, and renewed 23rd May, 1845, 80 H. D. 3 s. 432. 798. For similar course in the case of an amendment to a motion, see 142 C. J. 111. 116.

was proposed for extending limited liability to joint-stock banks, to which an amendment was proposed affirming the same principle in a modified form. The house refused to permit either of these propositions to form part of the question, which was consequently reduced to the single word "that." On the 11th February following, a bill to the same effect was brought in without objection, the house having pronounced its judgment upon a question not substantially the same.<sup>1</sup> On the 31st March, 1859, an amendment was proposed, but not made, to a proposed amendment on the second reading of the Representation of the People Bill, expressing an opinion in favour of the ballot: but this was held not to preclude a motion on a later day for bringing in a bill for the taking of votes by way of ballot.<sup>2</sup> On the 5th March, 1872, a motion was made impugning the general operation of the Elementary Education Act, 1870, and enumerating several points in which it failed, including the payment of school fees to denominational schools, and an amendment to the question thereon was carried affirming that it was too soon to review the provisions of the Act. On the 23rd April, Mr. Candlish brought forward a motion for leave to bring in a bill to repeal section 25 of the Education Act, which authorized the payment of school fees to denominational schools. Exception was taken to this motion, on the ground that substantially it had been embraced in the resolution of the 5th March, and was excluded from consideration by the amendment; but it was held that a resolution in terms so general could not prevent a member from moving for leave to bring in a bill to repeal a single section of the Act. Moreover, a motion for leave to bring in this bill differed essentially from a resolution condemning in general terms the operation of the Act.<sup>3</sup> The rejection of an instruction to a committee on a bill does not prevent the house from entertaining a separate bill during the same session, which deals with the object of such instruction.<sup>4</sup> So also, when an objection was taken on the 20th July, 1870, that one of the objects of a bill then under discussion was to effect the repeal of an Act, a proposal which the house had negatived during that session, and that therefore the bill could not be considered, the Speaker overruled the objection.

<sup>1</sup> 113 C. J. 10. 48. See also proceedings on Negro Apprenticeship, 1838, 93 C. J. 418. 541.

<sup>2</sup> 114 C. J. 145. 170.

<sup>3</sup> 127 C. J. 78. 156.

<sup>4</sup> Medical Relief Disqualification Removal Bill, 140 C. J. 78. 317, 294 H. D. 3 s. 1938.

As he pointed out, the bill had been introduced before the house had arrived at that decision, and the provision for the repeal of the Act might be struck out of the schedule by the committee on the bill.<sup>1</sup> On the 8th October, 1912, a motion to exempt a bill from interruption under standing order No. 1 at eleven o'clock on that and the following evening was amended by limiting the motion to that day. On the following day a motion to exempt the same bill from interruption at that sitting was objected to in view of the decision of the house of the previous day. The Speaker ruled, however, that the motion could be made, as by its decision on the previous day the house could not be taken to have precluded itself from reconsidering the question on the following day.<sup>2</sup>

Rule as  
applied to  
bills.

A greater freedom is admitted in proposing questions in the case of bills, as the object of the different stages is to afford the opportunity of reconsideration; and an entire bill may be regarded as one question, which is not decided until it has passed. Upon this principle, it is laid down by Hatsell, and is constantly exemplified, "that in every stage of a bill, every part of the bill is open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected."<sup>3</sup> The same clauses or amendments may be decided in one manner by the committee, in a second by the house on report, and, formerly, might have been dealt with again on the third reading; and yet the inconsistency of the several decisions will not be manifest when the bill has passed. On the 8th August, 1836, a clause, which was added on the report of the Pensions Duties Bill, to exempt the pension of the Duke of Marlborough from the provisions of that bill, was struck out by amendment on the third reading of the bill.<sup>4</sup> In 1864, in committee on the Poisoned Flesh Prohibition, &c. Bill, a clause was added, providing that the bill should not extend to Ireland. This clause was left out on the consideration of the bill, as amended, and lastly, on the third reading, the bill was recommitted,

<sup>1</sup> 203 H. D. 3 s. 563.

<sup>2</sup> 42 H. C. Deb. 5 s. 367.

<sup>3</sup> 2 Hatsell, 135. Similarly an amendment may be proposed to a bill although it has been rejected when moved to a resolution of a committee of the whole house necessary for the progress of the bill, 41 H. C. Deb. 5 s. 1540.

<sup>4</sup> 91 C. J. 762, 817. In 1844, an amendment of Lord Ashley's (for ten

hours' labour) having been carried against the government in the Factories Bill (which limited the hours of labour to twelve), the government withdrew the bill, and brought in another to the same effect, which was ultimately carried; and thus the decision of the house, upon Lord Ashley's amendment, was virtually reversed, Lord Dalling, *Life of Lord Palmerston*, iii. 136, n.

and a proviso was introduced imposing restrictions upon the operations of the bill in Ireland.<sup>1</sup>

When bills have ultimately passed or have been rejected, the rules of both houses are positive that they shall not be introduced again: but the practice is not strictly in accordance with them. The principle was thus stated by the Lords, 17th May, 1606—

Practice with regard to bills once passed or rejected. Lords.

“That when a bill hath been brought into the house, and rejected, another bill of the same argument and matter may not be renewed and begun again in the same house in the same session where the former bill was begun: but if a bill begun in one of the houses, and there allowed and passed, be disliked and refused in the other, a new bill of the same matter may be drawn and begun again in that house whereunto it was sent; and if, a bill being begun in either of the houses, and committed, it be thought by the committees that the matter may better proceed by a new bill, it is likewise holden agreeable to order in such case, to draw a new bill, and to bring it into the house.”<sup>2</sup>

It was also declared in a protest, signed by seven lords, 23rd February, 1691, in reference to the Poll Bill, in which a proviso contained the substance of a bill which had dropped in the same session, “that a bill having been dropped, from a disagreement between the two houses, ought not, by the known and constant methods of proceedings, to be brought in again in the same session.” The Lords, nevertheless, agreed to that bill, but with a special entry, declaring that they would not hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to the rules and methods of Parliament.<sup>3</sup>

In the Commons it was agreed for a rule, 1st June, 1610, that “no bill of the same substance be brought in the same session,” but a second bill has been ordered, with a special entry of the reasons which induced the house to depart from the usage of Parliament.<sup>4</sup> When part of a bill has been omitted by the Lords, and the Commons have agreed to such amendment, the part so omitted has been renewed in the same session in the form of a separate bill.<sup>5</sup> Thus

<sup>1</sup> 119 C. J. 425. 436, &c., 178 H. D. 3 s. 1611. When a bill to confirm several provisional orders has been rejected, it has been held that the presentation of a bill to confirm one of these orders only would not contravene the rule, 60 H. C. Deb. 5 s. 683. 694, Local Government Provisional Orders (No. 21) Bill (suspended in session 1913) and Local Govern-

ment Provisional Order (No. 3) Bill (Session 1914), 169 C. J. 105. 127, 64 H. C. Deb. 5 s. 2061.

<sup>2</sup> 2 L. J. 435.

<sup>3</sup> 15 L. J. 90.

<sup>4</sup> 1 C. J. 434; see also 158 H. D. 3 s. 1348; 62 C. J. 61.

<sup>5</sup> Drainage (Ireland) Bill, 118 C. J. 24. 203.

when the Lords struck out a provision in the Parliamentary Elections Redistribution Bill of session 1884-5, which enacted that the receipt of medical poor law relief should not disqualify a voter, the Commons agreed to that amendment, and passed a bill which effected the object of that provision.<sup>1</sup> In session 1899 the second reading of the Seats for Shop Assistants (Scotland) Bill, which had passed the Commons, was put off for six months by the Lords. A similar bill for England and Ireland was passed by the Commons, and sent to the Lords, by whom it was extended to Scotland by means of an amendment, to which the Commons agreed.<sup>2</sup> In session 1908, the Small Landholders (Scotland) Bill, having passed the Commons, was rejected by the Lords. Subsequently certain of its provisions were introduced in the Commons under the title of the Crofters' Commons Grazings Regulation Bill and passed through both Houses.<sup>3</sup> In the same session the Licensing Bill was passed by the Commons and rejected by the Lords. The provisions of the bill, which dealt with the exclusion of children from public-houses, were incorporated by the Lords in the Children Bill and were accepted by the Commons as Lords' amendments to that bill.<sup>4</sup>

Pro-  
cedure  
with  
regard to  
Lords'  
bills or  
amend-  
ments  
affecting  
Commons'  
privileges.

A method of procedure, moreover, has been adopted, with the sanction of both houses, by which these rules are partially disregarded. When the Lords, out of regard for the privileges of the Commons, defer the consideration of the amendments made by the committee on a bill received from the Commons, for a period beyond the probable duration of the session, if such amendments be otherwise acceptable to them, the Commons appoint a committee to inspect the Lords' Journals, and, on receiving their report, which explains the position of the bill in the Lords, order another bill to be brought in. This bill often has precisely the same title, but its provisions are altered so as to conform to the amendments made in the Lords. In this form it is sent to the Lords, received by them without any objection and passed. Such a bill is not identically the same as that which preceded it: but it is impossible to deny that it is "of the same argument and matter," and "of the same substance." This proceeding can be resorted to when the Lords pass a bill and send it down to the Commons, with clauses that trench upon their privileges. The Commons can lay the bill aside, and order another,

<sup>1</sup> Medical Relief Disqualification Removal Bill, 140 C. J. 317, 298 H. D. 3 s. 1590.

<sup>2</sup> 154 C. J. 386.

<sup>3</sup> 163 C. J. 384. 514.

<sup>4</sup> 163 C. J. 500



precisely similar, to be brought in, which, in due course, is sent up to the Lords. A proceeding somewhat similar may arise, when a bill is returned from the Lords to the Commons with amendments which the Commons cannot entertain consistently with their own privileges. In that case, if the Commons be willing to adopt the amendments, they can order the bill to be laid aside and another to be brought in.<sup>1</sup>

If a bill has been postponed or laid aside in the House of Commons, the Lords have sometimes appointed a committee to search the Votes and Proceedings of the Commons, and may, if they think fit, introduce another bill and send it to the Commons.<sup>2</sup>

Proceedings in Lords with regard to bill laid aside by Commons. Prorogation to re-new bills.

In all the preceding cases, the disagreement of the two houses is only partial and formal and there is no difference in regard to the entire bill. If the second or third reading of a bill sent from one house to the other be deferred for three or six months, or if it be rejected, the bill cannot be revived in the same session. Hence, Parliament was prorogued from the 21st to the 23rd October, 1689, in order to renew the Bill of Rights, concerning which a difference had arisen between the two houses, that was fatal to its progress;<sup>3</sup> in 1707, for a week, in order to permit the revival of a bill dealing with fraudulent commerce with Scotland, which had been rejected by the Lords;<sup>4</sup> and in 1831, from the 20th October to the 6th December, in order to bring in the third Reform Bill.<sup>5</sup>

By a rule formerly in force,<sup>6</sup> a second bill, at variance with the provisions of a bill passed during the same session, could not be introduced; and thus, in 1721, a prorogation for two days was resorted to in order to enable Acts relating to the South Sea Company to be passed, contradictory to clauses contained in another Act of the same session.<sup>7</sup>

Amendment of Acts of the same session.

Proposals have been made for a provision, either by statute or by standing orders, for the suspension of bills from one session to another, or for resuming proceedings upon such bills, notwithstanding a prorogation. These schemes have been discussed in Parliament and carefully considered by committees: but various considerations have restrained the legislature from disturbing the constitutional law by

Proposals for suspending or resuming bills.

<sup>1</sup> 91 C. J. 777. 810; 100 ib. 664. 688; 103 ib. 888; 127 ib. 167.

<sup>2</sup> 75 L. J. 590; 77 ib. 505.

<sup>3</sup> 10 C. J. 271.

<sup>4</sup> Burnet, ii. 467; 2 Coxe's Walpole, 8; 2 Hatsell, 127.

<sup>5</sup> 86 C. J. 935.

<sup>6</sup> This rule was annulled in 1850, 13 & 14 Vict. c. 21, s. 1, 52 & 53 Vict. c. 63, s. 10.

<sup>7</sup> 19 C. J. 639.

which parliamentary proceedings are discontinued by a prorogation.<sup>1</sup>

<sup>1</sup> Earl of Derby's Parliamentary Proceedings Adjournment Bill, 1848, 98 H. D. 3 s. 329, 981, 1255; 99 ib. 246; 100 ib. 131; Report of Commons' Committee on Public Business, Parl. Pap. (H. C.) sess. 1847-8, No. 644; Report of Lords' Committee on Public Business, Parl. Pap. (H. L.) sess. 1861, No. 95; Report of Commons' Committee on Business of the House, Parl. Pap. (H. C.) sess. 1861, No. 173; Marquess of Salisbury's Parliamentary Proceedings Bill, 1869, 194 H. D. 3 s. 588; 1883, 279 ib. 2; Report of Joint Committee on Despatch of Business in Parliament, Parl. Pap. (H. C.) sess.

1868-9, No. 386; Reports of Commons' Committees on Public Business, Parl. Pap. (H. C.) sess. 1878, No. 268, and on Abridged Procedure on partly considered bills, Parl. Pap. (H. C.) sess. 1890, No. 298. In session 1903, provision was made for resuming in the following session the proceedings on the Port of London Bill as reported from the Joint Committee. A resolution for the resumption of proceedings on the bill was agreed to in the following session, but further progress was not made with the bill, 159 C. J. 181. For the suspension of private and provisional order bills, see Chapter XXVIII.

## CHAPTER XII.

### RULES OF DEBATE.

In the House of Lords, pursuant to standing order No. 25, a peer addresses his speech "to the rest of the lords in general." In the Commons, a member addresses the Speaker; and it is irregular for him to direct his speech to the house or to any party on either side of the house. A member must address the house in English.<sup>1</sup> Manner of speaking.

A member is not permitted to read his speech, but may refresh his memory by a reference to notes. The reading of written speeches, which has been allowed in other deliberative assemblies, has never been recognized in either house of Parliament. A member may read extracts from documents, but his own language must be delivered *bonâ fide*, in the form of an unwritten composition. Any other rule would be at once inconvenient and repugnant to the true theory of debate.<sup>2</sup> Reading speeches.

In both houses every member who speaks rises in his place and stands uncovered. The only exception to the rule is in cases of sickness or infirmity, when the indulgence of a seat is allowed, at the suggestion of a member and with the general acquiescence of the house.<sup>3</sup> The only occasion, in both houses, when a member speaks sitting and covered is when a question of order arises during a division.<sup>4</sup> A member may speak from the side galleries, appropriated to members, but not from below the bar.<sup>5</sup> Place of speaking.

<sup>1</sup> 89 Parl. Deb. 4 s. 546.

<sup>2</sup> 1 C. J. 272. 494; 7 H. D. 1 s. 208; 17 H. D. 3 s. 1281; 83 ib. 1169; 223 ib. 178; 235 ib. 773; 122 Parl. Deb. 4 s. 554; 192 ib. 742; 80 H. C. Deb. 5 s. 391. See also Colchester, ii. 60. 432. Although on one occasion, during the debate on the Household Franchise Bill, 1873, a letter from Mr. Gladstone was read to the house, containing statements regarding the bill under discussion (217 H. D. 3 s. 842), when it was proposed, in like manner, to use in debate a letter from Mr. Gladstone touching the Customs and Inland Revenue (No. 2) Bill, 1885, the Speaker, in

private consultation, expressed his disapproval, pointing out that the proceeding would be an attempt to carry on debate by proxy; and deference was observed to the Speaker's opinion.

<sup>3</sup> Lord Wynford, 64 L. J. 167; Mr. Wynn, 67 H. D. 3 s. 658. Questions proposed by the Speaker sitting owing to illness, 121 C. J. 197.

<sup>4</sup> 278 H. D. 3 s. 854; 308 ib. 1165; 135 Parl. Deb. 4 s. 1024.

<sup>5</sup> 246 H. D. 3 s. 1363. Speaking from the galleries is inconvenient, and rarely resorted to.

Time of  
speaking.

Debate arises when a question has been proposed by the Speaker and before it has been fully put. In the House of Lords, under standing order No. 30, "when a question has been entirely put by the Lord Speaker, no lord is to speak on the question before voting;" and a question being entirely put implies that the voices have also been given. In the Commons no member may speak to any question after the same has been fully put by the Speaker; and a question is fully put when he has taken the voices both of the ayes and of the noes.<sup>1</sup>

Choice of  
member  
to speak.  
Lords.

Owing to the limited authority of the Lord Speaker in directing the proceedings of the House of Lords, the right of a peer to address their lordships depends solely upon the will of the house. When two peers rise at the same time, unless one immediately gives way, the house calls upon one of them to speak; and if each be supported by a party, there is no alternative but a division. Thus, on the 3rd February, 1775, the Earl of Dartmouth and the Marquis of Rockingham both rising to speak, it was resolved, upon question, that the former "shall now be heard."<sup>2</sup> If the lord chancellor rises from the woolsack to address the house, it is customary to give him precedence over other peers who may rise at the same time.<sup>3</sup>

Commons.

In the Commons, when two or more members rise to speak, the Speaker calls on the member who, on rising in his place, is first observed by him. Formerly, if the Speaker's call was questioned by the house, a motion was made that one among the members who had risen to speak "be now heard" or "do now speak."<sup>4</sup> On the 20th March, 1782, Lord North and the Earl of Surrey rose together; and on Mr. Fox moving that the latter be now heard, Lord North adroitly spoke to that question and announced his resignation, which he had been anxious to communicate to the house.<sup>5</sup> A similar contest arose between Mr. Pitt and Mr. Fox, on the 20th February, 1784:<sup>6</sup> and more recently between Sir Robert Peel and Sir Francis Burdett;

<sup>1</sup> 17th May, 1606, "Any man may speak after the affirmative question and before the negative." 1 C. J. 310; 40 H. D. 1 s. 79, Colchester, iii. 74; 50 H. C. Deb. 5 s. 1674. 1859.

<sup>2</sup> 34 L. J. 306; see also 18 H. D. 1 s. 719, n.; 116 L. J. 325; 9 H. L. Deb. 5 s. 1059.

<sup>3</sup> Debate on Roman Catholic Relief Bill, 3rd April, 1829, when the lord chancellor and Lord Kenyon rose together, 21

H. D. 2 s. 187.

<sup>4</sup> 2 Cav. Deb. 386.

<sup>5</sup> Fox, Memorials, i. 295.

<sup>6</sup> 39 C. J. 943. On the 12th Jan. another dispute had arisen. Mr. Pitt claimed precedence, as having a message from the king: but as Mr. Fox had been in possession of the house before Mr. Pitt rose, and was interrupted by members coming to be sworn, the Speaker decided in his favour, 24 Parl. Hist. 269.

and between Lord Sandon and Mr. Duncombe.<sup>1</sup> On the 18th May, 1863, in committee of supply, the solicitor-general and Mr. Nicol both rising, the former was called by the chairman : but several members calling upon the latter, a motion was made that Mr. Solicitor-General do now speak. This motion, however, was withdrawn, and Mr. Nicol proceeded to address the committee.<sup>2</sup> This mode of proceeding is not supported by present usage.<sup>3</sup> It is the Speaker's duty to watch members as they rise to speak ; and the decision should be left with him. In the Commons not less than twenty members have often been known to rise at once, and order can only be maintained by acquiescence in the call of the Speaker,<sup>4</sup> who, to elicit discussion in the most convenient form, calls, as a rule, upon members on either side of the house alternately, who answer one another.<sup>5</sup>

A new member who has not previously spoken, is generally called upon, by courtesy, in preference to other members rising at the same time : but this privilege will not be conceded unless claimed within the Parliament to which the member was first returned.<sup>6</sup> New members.

On resuming an adjourned debate, the member who moved its adjournment is, by courtesy, entitled to speak first on the resumption of the debate : <sup>7</sup> but for that purpose he must rise in his place in order to avail himself of his privilege, as, unless he rises, it is not the duty of the Speaker to call upon him ; <sup>8</sup> though if, having obtained this advantage, he does not avail himself thereof at the resumption of the debate, he is not thereby debarred from subsequently joining therein.<sup>9</sup> A member who moves the adjournment of a debate with a view to speaking upon the main question on a future day, must, to obtain this privilege, confine himself to that formal motion.<sup>10</sup> A member who has moved or seconded a motion for the adjournment Precedence to member who has moved the adjournment of the debate.

<sup>1</sup> 86 C. J. 517 ; 95 ib. 557. See also Mr. Locke and Mr. Forbes Mackenzie, 105 ib. 509, 112 H. D. 3 s. 1190.

<sup>2</sup> 118 C. J. 232.

<sup>3</sup> 142 Parl. Deb. 4 s. 204. 433.

<sup>4</sup> On the 26th Feb. 1872, observations were made concerning a supposed "Speaker's List" by which his choice was governed. Such a list, however, was disclaimed by the Speaker himself, and by Mr. Gladstone on behalf of himself and the secretary to the treasury, 209 H. D. 3 s. 1032. See also 1 H. C. Deb. 5 s. 236 and 77 ib. 1457, as to Mr. Speaker's choice among members desiring to move concurrent amendments.

<sup>5</sup> An obsolete rule exists on the journal, 6th June, 1604, that if two stand up to speak to a bill, he against the bill be first heard, 1 C. J. 232.

<sup>6</sup> On the 25th March, 1859, it was claimed in vain for Mr. Beaumont, who had sat in the previous Parliament, 153 H. D. 3 s. 839.

<sup>7</sup> 333 H. D. 3 s. 1132. 1284.

<sup>8</sup> 126 H. D. 3 s. 1243. This rule has since been repeatedly maintained by the Speaker, as in the case of Mr. Warren, 148 H. D. 3 s. 979.

<sup>9</sup> 308 H. D. 3 s. 614 ; 38 H. C. Deb. 5 s. 624.

<sup>10</sup> 5 H. C. Deb. 5 s. 1552.

of a debate, which has been negatived is not entitled to speak again to the main question ;<sup>1</sup> and the member whose subsequent motion for adjournment has been agreed to is, therefore, entitled to be called upon on resuming the debate.<sup>2</sup> If a motion for adjournment to secure the power of first speech on the resumption of the debate be discussed until the business of the house is interrupted and adjourned pursuant to the standing orders, the mover of the motion, although his motion has lapsed (see p. 252), does not on that account lose the privilege which he sought by making the motion for adjournment.<sup>3</sup> In like manner, when a debate has been adjourned,<sup>4</sup> while a member was speaking, upon the interruption of business prescribed by the standing orders, he has been allowed, on the next occasion, to resume the adjourned debate, and continue his speech.<sup>5</sup>

Relevancy  
in debate.

A member, who, having received the Speaker's call, is "in possession of the house," cannot be interrupted by a member who desires to gain priority in moving an amendment (see p. 262) or to make an explanation (see p. 286) unless he chooses to give way. He must direct his speech to the question then under discussion, or to a motion or amendment he intends to move,<sup>6</sup> or to a point of order. The precise relevancy of an argument is not always perceptible ;<sup>7</sup> when, however, a member wanders from the question, the Speaker reminds him that he must speak to the question.<sup>8</sup> It follows, therefore, that debate must not stray from the question before the house to

<sup>1</sup> 194 H. D. 3 s. 1451. 1467 ; 227 ib. 1098 ; 232 ib. 1341 ; 250 ib. 126. 130. 142 ; 2 Parl. Deb. 4 s. 1172. 1201 ; 141 ib. 330.

<sup>2</sup> Galway Election 8th Aug. 1872 (Sir Colman O'Loughlen), 213 H. D. 3 s. 761. On the 6th July, 1874, upon the second reading of the Church Patronage (Scotland) Bill, Mr. Jenkins having moved the adjournment of the debate, which was negatived, and Mr. Anderson having moved the adjournment of the house, which was also negatived, Mr. Cameron moved the adjournment of the debate, which was agreed to. Accordingly, on the resumption of the debate, on the 13th July, he rose and was called upon by the Speaker, 220 H. D. 3 s. 1183-5, 1527.

<sup>3</sup> 7 Parl. Deb. 4 s. 300. 334.

<sup>4</sup> An adjournment of the debate has been agreed upon, to enable a member to continue his speech upon another day. 8th March, 1809, "Mr. Perceval having spoken for three hours on the charges

against the Duke of York, the house loudly called for an adjournment. Mr. Perceval stated that he had more to offer in concluding, and would go on or stop as the house pleased. The adjournment of the debate till the next day passed by acclamation. *N.B.*—The first instance in my time of adjourning in the middle of a speech," Colchester, ii. 172, 13 H. D. 1 s. 114.

<sup>5</sup> 198 H. D. 3 s. 369 ; 73 Parl Deb. 4 s. 875.

<sup>6</sup> 59 H. D. 3 s. 507 ; 112 Parl. Deb. 4 s. 404 ; 167 ib. 839 ; 75 H. C. Deb. 5 s. 720 ; 85 ib. 1510.

<sup>7</sup> See the celebrated debate, 6th May, 1791, on the Quebec Government Bill, in which Mr. Burke insisted upon the relevancy of Paine's Rights of Man, and the recent events of the French Revolution, Lord John Russell's Life of Fox, ii. 253.

<sup>8</sup> "If any man speak not to the matter in question, the Speaker is to moderate," 18th May, 1604, 1 C. J. 975.

matters which have been decided during the current session,<sup>1</sup> or anticipate a matter appointed for the consideration of the house,<sup>2</sup> or of which notice has been given.<sup>3</sup> For instance, upon a motion for the appointment of a committee upon the game laws, a member was restrained from criticizing the provisions of certain bills before the house for the amendment of those laws ;<sup>4</sup> though when bills, in the charge of the government, dealing with subjects bound together by a common principle, stand in a series upon the notice paper, debate on the first bill may include a discussion of the bills of a cognate character.<sup>5</sup> On the consideration by the house of the names, taken *serialim*, of commissioners to be appointed pursuant to the provisions of a bill,<sup>6</sup> discussion, sought to be raised upon each name, of the general policy involved in the appointment of the commissioners was not permitted. On a motion for the appointment of a select committee<sup>7</sup> or for determining the number of its members,<sup>8</sup> the merits of the matter referred to the committee have not been allowed to be debated. On the proposal that a sessional order be made a standing order of the house the order itself is not open to debate.<sup>9</sup> Nor on a motion prescribing procedure for concluding the consideration of stages of a bill or other business, can the bill or the business itself be discussed.<sup>10</sup> A remark which has been ruled to be out of order cannot be subjected to debate.<sup>11</sup>

A member who resorts to persistent irrelevance may, under standing order No. 19, be directed by the Speaker or the chairman to dis-  
continue his speech after the attention of the house has been called  
to the conduct of the member ;<sup>12</sup> and akin to irrelevancy is the

Irre-  
levance or  
repetition  
S. O. 19,  
Appendix  
L

<sup>1</sup> 197 Parl. Deb. 4 s. 161.

<sup>2</sup> 140 H. D. 3 s. 2037 ; 167 ib. 1140 ; 176 ib. 1797 ; 189 ib. 91. 96 ; 210 ib. 1815 ; 212 ib. 1430 ; 241 ib. 807 ; 171 Parl. Deb. 4 s. 1740.

<sup>3</sup> 146 H. D. 3 s. 1702 ; 153 ib. 333 ; 165 ib. 799 ; 185 ib. 886 ; 211 ib. 1281 ; 238 ib. 1492 ; 239 ib. 1249 ; 310 ib. 1830 ; 311 ib. 15. 1633 ; 23 Parl. Deb. 4 s. 997 ; 165 ib. 662 ; 180 ib. 1621.

<sup>4</sup> 195 H. D. 3 s. 1718 ; see also 257 ib. 812.

<sup>5</sup> 324 H. D. 3 s. 1066 ; 336 ib. 1594. See also Debate on Chelsea Water (Transfer) Bill, 39 Parl. Deb. 4 s. 5.

<sup>6</sup> 338 H. D. 3 s. 638.

<sup>7</sup> 146 Parl. Deb. 4 s. 993.

<sup>8</sup> 3 H. C. Deb. 5 s. 997.

<sup>9</sup> 312 H. D. 3 s. 801 ; 89 Parl. Deb. 4

s. 180 ; 115 ib. 876.

<sup>10</sup> 137 Parl. Deb. 4 s. 349. 678 ; 143 ib. 81. 86 ; 167 ib. 173 ; 172 ib. 642. 644. 663 ; 178 ib. 1206. 1220 ; 179 ib. 1582 ; 190 ib. 923 ; 6 H. C. Deb. 5 s. 929. 945 ; 16 ib. 290. 1796 ; 30 ib. 139. 192 ; 44 ib. 1671 ; 54 ib. 898.

<sup>11</sup> 308 H. D. 3 s. 738.

<sup>12</sup> The Speaker has directed a member to cease his speech, without previous notice from the chair, 142 C. J. 66. A member who continued to address the house in asking leave to move the adjournment under standing order No. 10 after the Speaker had told him that such a motion was contrary to an order of the house then in force, was called upon to discontinue his speech, 163 C. J. 403.

frequent repetition of the same arguments, whether those of the member speaking, or those of other members ; an offence which may be met by the power given to the chair under standing order No. 19.<sup>1</sup>

Debates  
on dila-  
tory  
motions.  
S. O. 22.  
23, Ap-  
pendix I.

Considerable laxity formerly arose in debate upon questions of adjournment,<sup>2</sup> and though efforts were made to enforce a stricter practice, it was not until 27th November, 1882, that standing orders Nos. 22 and 23 were passed, which restrict debate on all dilatory motions, such as motions for the adjournment of a debate, or of the house during any debate, or that the chairman report progress, or leave the chair, to the matter of such motion ; and which forbid members who move or second any such motion from moving or seconding a similar motion during the same debate. The standing orders also empower the Speaker, or the chairman, if he be of opinion that such dilatory motions are an abuse of the rules of the house, to put forthwith the question thereon from the chair<sup>3</sup> or to decline to propose the question thereon to the house.<sup>4</sup>

Debate on  
motions  
for ad-  
journment  
of the  
house.

Motions for the adjournment of the house, made when there is no question under discussion, must be clearly distinguished from similar motions made during a debate. The former can have no object but the discussion of some extraneous subject ; the latter have reference only to the adjournment of the question then before the house. The discussion of the former is governed, however, by the established rules of debate, and accordingly on a motion for the adjournment of the house moved because the business of supply had been concluded on an allotted day before the hour at which any other business could be taken (see p. 231), the Speaker has refused to allow a member to discuss the details of a bill standing on the notice paper for that sitting.<sup>5</sup> On the motion for the adjournment of the house or for the adjournment for a recess such as that at Easter, members have been precluded from anticipating the discussion of bills<sup>6</sup> and

<sup>1</sup> For examples, see 240 H. D. 3 s. 1662. A member suspended for persistent repetition or continued irrelevance, 257 ib. 1349 ; 258 ib. 1620-1627 ; 282 ib. 1081 ; 152 C. J. 264. For resolutions vesting power in the Speaker to stay impertinent speeches, passed in former times, see 14th and 17th April, 1604 ; 31st March, 1610, 1 C. J. 172. 423. 948.

<sup>2</sup> 99 H. D. 3 s. 1147. 1196 ; 101 ib. 508 ; 102 ib. 226. 1100 ; 232 ib. 1733.

<sup>3</sup> 143 C. J. 414, 329 H. D. 3 s. 1095 ; 157 C. J. 326 ; 160 ib. 269.

<sup>4</sup> 311 H. D. 3 s. 1648 ; 328 ib. 1887 ;

338 ib. 887 ; 339 ib. 1733 ; 36 Parl. Deb. 4 s. 355 ; 98 ib. 1213 ; 150 ib. 199. In the case of a motion that further proceeding on consideration of a bill, as amended, be adjourned, 151 C. J. 316. See also the Speaker's remarks in refusing to put a motion for the adjournment of the debate for the purpose of bringing on a subsequent order of the day, 24 Parl. Deb. 4 s. 1661.

<sup>5</sup> 92 Parl. Deb. 4 s. 301.

<sup>6</sup> 157 H. D. 3 s. 1804 ; 187 ib. 775 ; 94 Parl. Deb. 4 s. 995. 999 ; 15 H. C. Deb. 5 s. 1013.



notices of motions<sup>1</sup> upon the notice paper or order book, or from discussing matters that would entail legislation.<sup>2</sup> It has also been held that a member could not raise on the motion for the adjournment for a recess a matter that could be properly raised on the report of the vote on account which stood on that day's order paper.<sup>3</sup> As has already been stated in regard to motions, in determining whether a discussion is out of order on the ground of anticipation the probability of the matter anticipated being discussed within a reasonable time must be considered.<sup>4</sup> On the motion for the adjournment from Friday to Monday (see p. 197) it has been ruled that discussion on any matter that was irrelevant to the motion itself was out of order.<sup>5</sup>

It is not regular to discuss the merits of a bill or other order of the day upon a motion for its withdrawal or postponement, and debate must be strictly confined to the object of the motion.<sup>6</sup> A similar restraint has been placed upon the debate upon a motion to recommit a bill.<sup>7</sup> Otherwise, the merits of a bill might be debated not only upon its several stages but whenever its postponement is proposed. The discussion of each stage, moreover, might be anticipated, by resuming debates before the day appointed for its consideration by the house.<sup>8</sup> On 1st June, 1875, a member having moved the postponement of the second reading of a bill from the next day until a more distant day, another member rose to move that the order be

Restraints  
on dis-  
cussion of  
bills.

<sup>1</sup> 157 H. D. 3 s. 1166; 207 ib. 1640; 238 ib. 1492; 288 ib. 1499; 81 Parl. Deb. 4 s. 1414, 1419; 94 ib. 1011; 132 ib. 1041; 135 ib. 386, 387; 145 ib. 645; 147 ib. 1028; 171 ib. 1524; 189 ib. 1119; 14 H. C. Deb. 5 s. 1054.

<sup>2</sup> 71 Parl. Deb. 4 s. 1034; 123 ib. 204; 132 ib. 1043; 135 ib. 409; 193 ib. 2059; 171 ib. 1869; 174 ib. 1027; 36 H. C. Deb. 5 s. 1183-1188; 44 ib. 2253; 50 ib. 1007.

<sup>3</sup> 39 Parl. Deb. 4 s. 403.

<sup>4</sup> Standing order No. 10A. For debates upon the effect of notices of motions standing on the order book both upon debates on motions for the adjournment of the house and upon the power of moving the adjournment of the house under standing order No. 10, see 46 Parl. Deb. 4 s. 1349; 81 ib. 1414; 135 ib. 373; 171 ib. 1883. In session 1907 a resolution was agreed to declaring that to put a motion upon the paper or to introduce a bill to prevent the discussion of notices of motions for which precedence had been gained in the ballot, or the moving of the

adjournment of the house under standing order No. 10 was hurtful to the usefulness of the house and an infringement of the rights of members, and a select committee was appointed to consider the procedure of the house in relation to anticipatory motions and bills, 162 C. J. 96, 302, Parl. Pap. (H. C.), sess. 1907, No. 264. In session 1911 the debate on the motion for the adjournment for the Whitsuntide recess was by order of the house not restricted by the rule against anticipation, 166 C. J. 256.

<sup>5</sup> 116 Parl. Deb. 4 s. 1030.

<sup>6</sup> 215 H. D. 3 s. 304; 226 ib. 860; 337 ib. 1167; 339 ib. 1493; 198 Parl. Deb. 4 s. 2174; 47 H. C. Deb. 5 s. 1042. See also the Speaker's remarks in refusing to propose the question for the adjournment of the debate on such a motion, 113 Parl. Deb. 4 s. 341.

<sup>7</sup> 175 Parl. Deb. 4 s. 969; 179 ib. 296, 502; 6 H. C. Deb. 5 s. 662.

<sup>8</sup> 240 H. D. 3 s. 858.

discharged : but upon the Speaker representing the inconvenience and impropriety of such an amendment, which would raise a debate upon the merits of the bill, when its postponement only was in question, the amendment was not proceeded with.<sup>1</sup>

Speeches  
when no  
question  
is before  
the  
house.

The only exceptions admitted to the rule that a member may speak only when there is a question before the house, or when he is about to conclude with a motion or amendment (see p. 247), are questions asked of ministers or other members of the house before the commencement of public business (see p. 220), statements made by ministers of the Crown regarding public affairs, and personal explanations.

Minis-  
terial  
explana-  
tions.

Explanations are made to the house on behalf of the government regarding their domestic and foreign policy ; stating the advice they have tendered to the sovereign regarding their retention of office or the dissolution of Parliament ; announcing the legislative proposals they intend to submit to Parliament ; or the course they intend to adopt in the transaction and arrangement of public business. The time when these explanations are made is after the questions to ministers and to other members have been answered and before the commencement of public business ;<sup>2</sup> though a ministerial explanation has been made before the Speaker began to call on members to put their questions upon the notice paper.<sup>3</sup> As no question is before the house, debate on such statements is irregular.<sup>4</sup>

Explana-  
tion on  
leaving  
office.

Explanation by a member of the circumstances which have caused his resignation of an office in the government is usually made immediately before the commencement of public business.<sup>5</sup> Though

<sup>1</sup> 224 H. D. 3 s. 1235.

<sup>2</sup> 290 H. D. 3 s. 692 ; 5 Parl. Deb. 4 s. 915 ; 22 ib. 257 ; 150 ib. 49 ; 172 ib. 390 ; 187 ib. 958. An explanation has been permitted after motions at the commencement of public business had been disposed of and before the Speaker called upon the Clerk to read the orders of the day, 84 H. C. Deb. 5 s. 573.

<sup>3</sup> 293 H. D. 3 s. 1820 ; 34 Parl. Deb. 4 s. 1746. Ministerial explanations have also been made during debate on motions that afforded an opportunity for the statement, for instance, on motions for committee of supply and an adjournment of the house, 4th and 5th March, 1867, 185 H. D. 3 s. 1309. 1339. A statement has been permitted between the orders of the day after five o'clock on a Friday, 185 Parl. Deb. 4 s. 1067.

<sup>4</sup> Debate on a ministerial statement

has been raised upon a motion for adjournment, 290 H. D. 3 s. 696 ; 150 Parl. Deb. 4 s. 70 ; 65 H. C. Deb. 5 s. 1833 ; 84 ib. 1244.

<sup>5</sup> Lord Henry Lennox, 230 H. D. 3 s. 1481 ; Mr. W. E. Forster, 269 ib. 106 ; Mr. Mundella, 24 Parl. Deb. 4 s. 1191 ; Mr. Hayes Fisher, 120 ib. 1254 ; Mr. Wyndham, 145 ib. 1352 ; Mr. Pease, 72 H. C. Deb. 5 s. 7 ; Sir Edward Carson, 74 ib. 1812 ; Mr. Churchill, 75 ib. 1499 ; Mr. Birrell, 82 ib. 32. Explanations of this nature have been made during debate upon a motion to which such statements were relevant ; Mr. Courtney, 294 H. D. 3 s. 659 ; Mr. Chamberlain and Sir George Trevelyan, 304 ib. 1104. 1181 ; Lord George Hamilton, 131 Parl. Deb. 4 s. 417 ; Colonel Seely, 60 H. C. Deb. 5 s. 841 ; Sir John Simon, 77 ib. 962.

debate must not arise upon the explanation, statements pertinent thereto on behalf of the government have been permitted.

In regard to the explanation of personal matters, the house is usually indulgent; and will permit a statement of that character to be made without any question being before the house. Such explanations are made at the conclusion of questions to ministers and before the commencement of public business,<sup>1</sup> but no debate should ensue thereon.<sup>2</sup> General arguments or observations beyond the fair bounds of explanation or too distinct a reference to previous debates are out of order;<sup>3</sup> though a member has been permitted by the Speaker to make, at a subsequent sitting, an explanation regarding alleged misrepresentation in debate,<sup>4</sup> or in a question to a minister.<sup>5</sup> The indulgence of a personal explanation should be granted with caution; for, unless discreetly used, it is apt to lead to irregular debates.<sup>6</sup> A personal explanation has been permitted to be made by a member on behalf of another who was abroad,<sup>7</sup> or was ill,<sup>8</sup> or was suspended from the service of the house.<sup>9</sup> Explanations have also been allowed on behalf of gentlemen whose conduct had been reflected upon in debate;<sup>10</sup> though permission to make an explanation of this nature has been refused by the Speaker.<sup>11</sup>

Personal  
expla-  
nation.

Except on occasions when a reply is permitted (see p. 287), or in a committee, it is a rule, strictly observed in both houses, that no member shall speak twice to the same question, unless he speaks to explain some part of his speech which has been misunderstood. Accordingly, when a member speaks to a motion and resumes his seat without moving an amendment that he intended to propose, he cannot subsequently rise to move the amendment, having already

Restric-  
tion of  
speeches.

<sup>1</sup> 146 Parl. Deb. 4 s. 302; 45 H. C. Deb. 5 s. 1486, 1532.

<sup>2</sup> On 30th November, 1915, a minister at the close of a personal explanation moved the adjournment of the house in order to afford an opportunity for debate, 170 C. J. 296, 76 H. C. Deb. 5 s. 549.

<sup>3</sup> Lord C. Paget, 173 H. D. 3 s. 1913. An explanation of reflections made upon a member in a capacity other than that of a member of parliament has been ruled out of order, 2 H. C. Deb. 5 s. 1931.

<sup>4</sup> 87 H. D. 3 s. 480; 21 H. C. Deb. 5 s. 1066.

<sup>5</sup> 45 H. C. Deb. 5 s. 1532.

<sup>6</sup> Mr. Duncombe, 153 H. D. 3 s. 334;

Mr. Sheridan and the chancellor of the exchequer, 174 ib. 191; Mr. Lowe, Lord Robert Cecil, Mr. Disraeli, and Mr. Walter, 174 ib. 1203; Mr. Baillie Cochrane, the chancellor of the exchequer, and Mr. Roebuck, 178 ib. 372; 269 ib. 106-132. See also motion to express regret that imputations made against a member had not been withdrawn on the occasion of a personal explanation, 174 ib. 306.

<sup>7</sup> 157 H. D. 3 s. 718.

<sup>8</sup> 75 H. C. Deb. 5 s. 1487.

<sup>9</sup> 41 H. C. Deb. 5 s. 3203.

<sup>10</sup> Case of Dr. Beke, 190 H. D. 3 s. 422; case of Mr. Reed, 210 ib. 403.

<sup>11</sup> 269 H. D. 3 s. 1095.

spoken to the question before the house.<sup>1</sup> So also, a member who, when an order of the day has been read, makes a prolonged appeal that the consideration of the order should be deferred and resumes his seat, cannot again address the house thereon.<sup>2</sup> Under special circumstances, on an explanation from the Speaker, the pleasure of the house has been signified that a member should be allowed to speak a second time ;<sup>3</sup> and a second speech has been allowed to a minister, who had spoken early in the debate, in answer to a question which had rendered a ministerial explanation necessary or to answer a question addressed to him after he had spoken.<sup>4</sup>

Relaxa-  
tion of  
rule on  
consider-  
ation of  
bill from  
a stand-  
ing com-  
mittee.  
*S. O. 46*  
*(3), Ap-  
pendix I.*  
Right of  
expla-  
nation.  
Lords.

On the consideration by the house of a bill or that portion of a bill which has been committed to a standing committee, the rule against speaking more than once does not apply to the member in charge of the bill or to the mover of any amendment or new clause in respect of that amendment or clause.

The right of an explanation is regulated in the House of Lords by standing order No. 27, which prescribes that

"No lord is to speak twice to any bill, at one time of reading it, or to any other proposition, except the mover in reply, unless it be to explain himself in some material point of his speech (no new matter being introduced), and that not without the leave of the house first obtained."

Commons.

In the Commons, a member who, during a debate, has spoken to a question may again be heard to offer explanation of some material part of his speech which has been misunderstood : but he must not introduce new matter, or endeavour to strengthen by new arguments his former position, which he alleges to have been misunderstood, or to reply to other members.<sup>5</sup> Here, again, a greater latitude is permitted in cases of personal explanation, where a member's character or conduct has been impugned in debate.<sup>6</sup>

Time for  
expla-  
nation.

The proper time for explanation is at the conclusion of the speech which calls for it : but it is a common practice for the member desiring to explain to rise immediately the statement is made to which his explanation is directed, when, if the member in possession of the house gives way and resumes his seat, the explanation is at once

<sup>1</sup> 191 H. D. 3 s. 1083. For the relaxation of this rule in the case of motions relating to the business of the house, see p. 264.

<sup>2</sup> 4 Parl. Deb. 4 s. 1930.

<sup>3</sup> 173 H. D. 3 s. 1549 ; 103 Parl. Deb. 4 s. 231 ; 145 ib. 833 ; 12 H. C. Deb. 5 s.

2105.

<sup>4</sup> 119 H. D. 3 s. 88. 153 ; 174 ib. 935.

<sup>5</sup> 165 H. D. 3 s. 1032 ; 167 ib. 1216 ; 175 ib. 462 ; 223 ib. 367. 1009 ; 226 ib. 525. 567 ; 231 ib. 301 ; 241 ib. 332 ; 242 ib. 1709.

<sup>6</sup> 87 H. D. 3 s. 537.

received : but the explanation cannot then be offered, if the member who is speaking declines to give way.<sup>1</sup>

A reply is only allowed to the peer or member who has proposed a substantive question to the house ; and this privilege is accorded to the mover of a substantive motion for the adjournment of the house.<sup>2</sup> It is not conceded to a member who moves an order of the day, such as a motion that a bill be read a second time ; or an amendment,<sup>3</sup> the previous question,<sup>4</sup> an adjournment during a debate,<sup>5</sup> a motion on the consideration of Lords' amendments, or an instruction to any committee.<sup>6</sup> Under these circumstances, it is not uncommon for a member to move an order of the day or to second a substantive motion by raising his hat, without rising to address the chair, and to reserve his speech for a later period in the debate. Formerly a member who had moved an order of the day or seconded a motion in this manner, was precluded from afterwards addressing the house upon the same question, or was heard merely by the indulgence of the house : <sup>7</sup> but under present usage, the option of speaking at a subsequent period of the debate has been conceded.<sup>8</sup> In moving or seconding a motion for adjournment or an amendment, a member cannot avail himself of this privilege,<sup>9</sup> as he must rise in his place to make or second the motion, and thus cannot avoid addressing the house, however shortly. As a member who moves an amendment cannot speak again, so a member who seconds an amendment is equally unable to speak again upon the original question, after the amendment has been withdrawn or otherwise disposed of. In both cases, the members have already spoken while the original question was before the house and before the amendment had been proposed from the chair.<sup>10</sup> For the same reason, a member who has addressed the house in moving the second reading of a bill cannot subsequently move the adjournment of the debate, unless an amendment has been since proposed.<sup>11</sup>

<sup>1</sup> See explanation of this rule as stated by the Speaker, 24th Nov. 1819, 41 H. D. 1 s. 157 ; 157 H. D. 3 s. 1407 ; 163 ib. 83 ; 179 ib. 572 ; 183 ib. 800 ; 192 ib. 749 ; 208 ib. 343. 1190 ; 213 ib. 728 ; 179 Parl. Deb. 4 s. 1890.

<sup>2</sup> 148 H. D. 3 s. 762. 770 ; 153 ib. 1301. 1342 ; 186 ib. 1505 ; 207 ib. 1350 ; 210 ib. 1846, &c.

<sup>3</sup> 174 H. D. 3 s. 2022 ; 240 ib. 1527.

<sup>4</sup> 8th Feb. 1858 (Operations in India, Mr. Disraeli), 148 H. D. 3 s. 890.

<sup>5</sup> 186 H. D. 3 s. 1505.

<sup>6</sup> 186 H. D. 3 s. 1443 ; Conventual and Monastic Institutions, 9th May, 1870 (Mr. Matthews) ; Charing Cross and Victoria Embankment Bill, 27th February, 1873 (Lord Elcho).

<sup>7</sup> 4 H. D. 2 s. 1013.

<sup>8</sup> 210 H. D. 3 s. 304.

<sup>9</sup> 118 H. D. 3 s. 1147. 1163 ; 138 ib. 1300. 1756 ; 5 Parl. Deb. 4 s. 1744.

<sup>10</sup> 237 H. D. 3 s. 1532 ; 240 ib. 123 ; 241 ib. 1311 ; 89 Parl. Deb. 4 s. 1077. 1128 ; 176 ib. 17.

<sup>11</sup> 227 H. D. 3 s. 1659.

**Practice in committee.**

In a committee of the whole house the restriction upon speaking more than once is altogether removed, as will be more fully explained in speaking of the proceedings of committees (see p. 409).

**Power to speak again when new question is proposed.**

The adjournment of a debate does not enable a member to speak again upon a question, when the discussion is renewed on another day, however distant :<sup>1</sup> but directly a new question has been proposed, as, "that this house do now adjourn," "that the debate be adjourned," the previous question,<sup>2</sup> or an amendment, members are at liberty to speak again ; as the rule applies strictly to the prevention of more than one speech to each separate question proposed : but a member who has already spoken to a question, or has moved or seconded an amendment thereto,<sup>3</sup> or a motion for the adjournment of the debate, may not rise again to move an amendment, or the adjournment of the house or of the debate,<sup>4</sup> or any similar question, though he may speak to these new questions when proposed by other members. On the 27th October, 1884, an amendment to add words to the address in answer to the Queen's speech was amended, without opposition, by leaving out the earlier portion of it. A doubt was raised whether the amendment so amended had not become a new question, upon which members who had already spoken might again address the house, but after full consideration it was ruled that it was still the same question.<sup>5</sup>

**Speech on point of order.**

A member, however, who has already spoken, may rise and speak again upon a point of order or privilege, if he confines himself to that subject, and does not refer to the general tenour of a speech.<sup>6</sup>

**Order in debate.**

For preserving decency and order in debate, various rules have been laid down, which, in the Lords, are enforced by the house itself, and in the Commons by the Speaker in the first instance, and, if necessary, by the house. Any member may notice the violation of these rules, either by a cry of "order," or by rising in his place, and, in the Lords, addressing the house, and, in the Commons, the Speaker. When a member speaks to order, he must simply direct attention to the point complained of and submit it to the decision of the Speaker (see p. 310).

<sup>1</sup> 1 C. J. 245.

<sup>2</sup> 65 H. D. 3 s. 826.

<sup>3</sup> 190 H. D. 3 s. 674 ; 211 ib. 870 ; 212 ib. 1118.

<sup>4</sup> Ten divisions took place, 17th June, 1870, upon questions of adjournment, to defeat the Clerical Disabilities Bill, 125 C. J. 261. The rule which prevents a

second speech upon the same question was strictly enforced ; and when the minority was reduced to twenty-one, it happened that not more than six members of that party were in a condition to move further adjournments.

<sup>5</sup> 140 C. J. 10, 293 H. D. 3 s. 298.

<sup>6</sup> 195 H. D. 3 s. 2008.

The rules for the conduct of debate divide themselves into two parts, viz. : such as are to be observed by members addressing the house ; and those which have regard to the behaviour of members listening to the debate.

Conduct  
of debate.

A member, while speaking to a question, may not allude to debates of the same session upon any question or bill not then under discussion ; speak against or reflect upon any determination of the house, unless he intends to conclude with a motion for rescinding it ; allude to debates in the other house of Parliament ; utter treasonable or seditious words, or use the King's name irreverently, or to influence the debate ; speak offensive and insulting words against the character or proceedings of either house ; refer to matters pending a judicial decision ; reflect upon the conduct of the sovereign or of other persons in authority ; make personal allusions to members of Parliament ; or obstruct public business.

Rules for  
members  
speaking.

It is a wholesome restraint upon members to prevent them from reviving a debate already concluded ; and there would be little use in preventing the same question or bill from being offered twice in the same session, if, without being offered, its merits might be discussed again and again.<sup>1</sup> The rule, however, is not always strictly enforced : peculiar circumstances may seem to justify a member in alluding to a past debate, and the house and the Speaker will judge, in each case, how far the rule may fairly be relaxed. On the 30th August, 1841, for instance, an objection was taken that a member was referring to a preceding debate and that it was contrary to one of the rules of the house. The Speaker said, " That rule applied in all cases : but where a member had a personal complaint to make, it was usual to grant him the indulgence of making it." <sup>2</sup> On the 7th March, 1850, he said, " The house is always willing to extend its indulgence, when an honourable member wishes to clear up any misrepresentation of his character : but that indulgence ought to be strictly limited to such misrepresentations, and ought not to extend to any observations other than by way of correction." <sup>3</sup> Again, on the 3rd March, 1856, a noble lord was allowed to refer to a former debate by way of personal explanation : but directly he proposed to introduce new matter, he was stopped by the Speaker ; and

Refer-  
ence to  
prior de-  
bates.

<sup>1</sup> On 28th February, 1845, Mr. Roche, 749 ; 238 ib. 1403.

who had come from Ireland on purpose to ask Mr. Roebuck a question, was stopped <sup>2</sup> 59 H. D. 3 s. 486 ; see also 65 ib. 642.

by Mr. Speaker, 78 H. D. 3 s. 137 ; 231 ib. <sup>3</sup> 109 H. D. 3 s. 462 ; see also 85 ib. 300.

the same rule was explained and enforced on the 26th February, 1858, on the 4th June, 1863, and on other occasions.<sup>1</sup> Nor is a member allowed to refer to a speech made in a committee of the whole house.<sup>2</sup> This rule, however, does not apply to debates upon different stages of a bill; and after the passing of an Act, allusions have been allowed to debates during its progress, while discussing a proclamation issued under that Act.<sup>3</sup> The proceedings and report of a select committee may not be referred to in debate before they have been laid upon the table (see p. 440). Upon a motion which practically rescinded a resolution of the house, reference was permitted to the debate upon that resolution.<sup>4</sup> There appears, however, to be a technical difficulty in the strict enforcement of the rule in committee, where a debate in another committee is referred to, as one committee is not supposed to be cognizant of the debates of another.<sup>5</sup>

Reading  
from  
printed  
books or  
news-  
papers.

A member may not read any portion of a speech, made in the same session, from a printed book or newspaper.<sup>6</sup> This rule, indeed, applies strictly to all debates whatsoever, the publication of them being a breach of privilege: but of late years it has been relaxed, by general acquiescence, in favour of speeches delivered in former sessions.<sup>7</sup> It is also irregular to read extracts from newspapers, letters or other documents referring to debates in the house in the same session.<sup>8</sup> Indeed, until 1840, the reading of any extracts from a newspaper, whether referring to debates or not, had been restrained as irregular. On the 9th March, 1840, the Speaker having called a member to order, who was reading an extract cut out from a newspaper, as part of his speech, Sir Robert Peel said it would be drawing the rule too tightly if members were restrained from reading relevant extracts from newspapers; and with the acquiescence of the house, the member proceeded to read the passage from the newspaper.<sup>9</sup> On the 14th February, 1856, when a member was called to order for reading an extract from a newspaper, the Speaker stated that, on a

<sup>1</sup> 140 H. D. 3 s. 1708; 149 ib. 10-14; 235 ib. 503. 1192; 236 ib. 36. 172; 10 Parl. Deb. 4 s. 523; 172 ib. 1520.

<sup>2</sup> 154 H. D. 3 s. 985.

<sup>3</sup> 129 H. D. 3 s. 374.

<sup>4</sup> 235 H. D. 3 s. 1703.

<sup>5</sup> In committee of supply, 142 H. D. 3 s. 1534.

<sup>6</sup> 203 H. D. 3 s. 1613, &c.

<sup>7</sup> On the 17th May, 1794, Sir William

Young objected to the reading of a speech of Sir Robert Walpole: but the Speaker decided it to be regular, drawing a distinction between the speeches of dead and living members, 31 Parl. Hist. 527.

<sup>8</sup> 84 H. D. 3 s. 232; 154 ib. 1200; 162 ib. 1885; 168 ib. 1108; 183 ib. 826; 191 ib. 2030; 206 ib. 1330; 208 ib. 1604; 241 ib. 831.

<sup>9</sup> 52 H. D. 3 s. 1063-1065.



former occasion when he had attempted to enforce this rule, he had been overruled by the house. The Chairman made a similar statement in committee of supply on the 9th March, 1857.<sup>1</sup>

The objections to the practice of referring to past debates apply with greater force to reflections upon votes of the house, unless made for the purpose of justifying a motion that the vote be rescinded. Those reflections not only revive discussion upon questions already decided, but are wholly irregular, inasmuch as the member is himself included in, and bound by, a vote agreed to by a majority.<sup>2</sup> Reflections also on the action taken by the Speaker, the chairman of ways and means and the house upon a closure motion are not permitted.<sup>3</sup>

The rule that allusions to debates in the other house are out of order, prevents fruitless arguments between members of two distinct bodies who are unable to reply to each other, and guards against recrimination and offensive language in the absence of the party assailed: but it is mainly founded upon the understanding that the debates of the other house are not known, and that the house can take no notice of them.<sup>4</sup> The daily publication of debates in Parliament offers a strong temptation to disregard this rule. The same questions are discussed by persons belonging to the same parties in both houses, and speeches are constantly referred to by members, which this rule would exclude from their notice;<sup>5</sup> and although there are few orders more important than this for the conduct of debate, and for observing courtesy between the two houses, not one perhaps is more generally transgressed. An ingenious orator may

Reflecting upon votes of the house.

Allusions to debates in the other house.

<sup>1</sup> 140 H. D. 3 s. 764; 144 ib. 2106.

<sup>2</sup> 2 Hatsell, 234, n.; see also 185 H. D. 3 s. 1123; 186 ib. 885.

<sup>3</sup> 328 H. D. 3 s. 1899; 329 ib. 58; 354 ib. 431; 9 Parl. Deb. 4 s. 450; 10 ib. 1411; 11 ib. 1839; 12 ib. 412-423. 835. 1197-1202; 16 ib. 1968; 39 ib. 867; 40 ib. 1731; 61 ib. 863; 110 ib. 499. 510; 151 ib. 980.

<sup>4</sup> Lord Peterborough's complaint regarding words spoken in the Commons, 1641, 4 L. J. 582; 156 H. D. 3 s. 1121; 198 ib. 368.

<sup>5</sup> See Lords' Debates, 3rd April, 1845 (Lord Ashburton), Commons' Debates, 4th April, 1845 (Lord J. Russell), on the Ashburton Treaty, 79 H. D. 3 s. 2. 172; Commons' Debates (Mr. Ffrench), 21st and 23rd July, 1845, and Lords' Debates (Lord Brougham), 22nd and 24th July, 1845, on the Irish Great Western Railway

Bill, 82 ib. 805. 872. 964. 1026; Lords' Debates, 27th June, 1848 (Earl Grey), 99 ib. 1243; Commons' Debates, 2nd April, 1852 (Mr. Cobden), 120 ib. 583; Lords' and Commons' Debates, 26th Feb. and 1st March, 1858 (Sir R. Bethell and Lord Campbell), 149 H. D. 3 s. 4. 69; and 177 ib. 1557; 183 ib. 1098, as examples of the violation of this rule. See also the Speaker's rulings concerning the power of quotation from a speech in the House of Lords, 351 ib. 1500; 180 Parl. Deb. 4 s. 1884, and his declaration that it was a very wholesome rule of the house not to allude to statements or debates of the current session in the other house, as to do so might bring the two houses into collision, 15 Parl. Deb. 4 s. 1781, and 191 H. D. 3 s. 1786; 116 Parl. Deb. 4 s. 1354; 176 ib. 344; 193 ib. 214; 75 H. C. Deb. 5 s. 2147.

break through any rules in spirit and yet observe them to the letter.<sup>1</sup>

**Debate on bills before the Lords.** The same rule has been applied to restrain the discussion of a bill which has been passed and sent to the Lords. On the 4th April, 1876, when it was proposed that a motion for an address to the Crown on the Royal Titles should be considered on the following Friday, the Speaker pointed out that the Royal Titles Bill, which had passed the Commons, stood for third reading in the Lords on that day, and that it would be irregular to discuss the proposed motion until the bill had been passed by the Lords. The motion was accordingly appointed for the following Monday.<sup>2</sup> In like manner, on an amendment to a bill in committee, which referred to the provisions of a bill before the Lords, debate on the details of that bill was not permitted,<sup>3</sup> and a member has been restrained by the Speaker from commenting on the provisions of a bill which was before the House of Lords<sup>4</sup> or upon the proceedings of the House of Lords in arriving at the decision communicated in a message then under consideration.<sup>5</sup>

**Allusions to reports or proceedings.** This rule has been held not to apply to reports of committees of the other house, even though they have not been communicated to the Commons,<sup>6</sup> nor is the rule extended to the votes or proceedings of either house, as they are recorded and printed by authority.<sup>7</sup>

**Irreverent use of King's name in debate.** Treasonable or seditious language or an irreverent use of his Majesty's name would be rebuked by any subject out of Parliament; and it is only consistent with decency, that a member of the legislature should not be permitted openly to use such language in his place in Parliament. Members have not only been called to order for such offences, but have been reprimanded, committed to the custody of the Serjeant or even sent to the Tower.<sup>8</sup>

**Use of King's name to influence a debate.** The irregular use of the King's name to influence a decision of the house is unconstitutional in principle and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorized mode of communicating his Majesty's recommendation or consent, through one of his ministers

<sup>1</sup> 192 H. D. 3 s. 1077; 208 ib. 1682; 229 ib. 1630; 231 ib. 749; 237 ib. 1262; 242 ib. 228.

<sup>2</sup> 228 H. D. 3 s. 1183.

<sup>3</sup> Criminal Law Amendment (Ireland) Bill, 142 C. J. 191.

<sup>4</sup> 314 H. D. 3 s. 68.

<sup>5</sup> 105 Parl. Deb. 4 s. 732.

<sup>6</sup> 99 H. D. 3 s. 631.

<sup>7</sup> Since 1860, the Lords' Minutes have been placed upon the table of the House of Commons, for reference, 159 H. D. 3 s. 856.

<sup>8</sup> 1 C. J. 50. 51. 104. 333. 335. 866; 9 ib. 760; 11 ib. 581; 15 ib. 70; 18 ib. 49. 54. 653; 4 Parl. Hist. 1385; 7 ib. 51. 511; D'Ewes, 41. 244; 259 H. D. 3 s. 168.

(see p. 541) : but his Majesty cannot be supposed to have a private opinion, apart from that of his responsible advisers ; and any attempt to use his name in debate to influence the judgment of Parliament, would be immediately checked and censured.<sup>1</sup> On the 12th November, 1640, it was moved that some course might be taken for preventing the inconvenience of his Majesty being informed of anything that is in agitation in the house before it is determined ; and on the 16th December, 1641, the Lords and Commons tendered to Charles I. a remonstrance to that effect. On the 17th December, 1788, the Commons resolved—

“ That it is now necessary to declare, that to report any opinion or pretended opinion of his Majesty, upon any bill or other proceeding depending in either house of Parliament, with a view to influence the votes of the members, is a high crime and misdemeanour, derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament, and subversive of the constitution of this country.” <sup>2</sup>

On the 26th February, 1808, in the debate on Mr. Canning's motion for papers relating to Denmark, Mr. Tierney said, “ The right hon. gentleman had forfeited the good opinion of the country, the house, and, as I believe, of his sovereign.” This the Speaker held to be such an introduction into debate of the personal opinion of the sovereign, respecting the conduct of a member of the house, as justified Mr. Tierney's being called to order.<sup>3</sup> On the 19th March, 1812, complaints were made in the House of Lords of the use of the Prince Regent's name in debate.<sup>4</sup>

The rule, however, must not be construed so as to exclude a statement of facts by a minister in which the sovereign's name may be concerned. In the debate on the Foreign Loans Bill, 24th February, 1729, Sir Robert Walpole stated that he was “ provoked to declare what he knew, what he had the king's leave to declare, and what would effectually silence the debate.” Upon which his statement was called for, and he declared that a subscription of 400,000*l.* was being raised in England for the service of the Emperor. When he sat down, Mr. Wortley Montagu complained, that the minister had introduced the name of the king to “ overbear their debates : ” but Walpole replied that, as privy councillor, he was sworn to keep the king's counsel secret, and that he had therefore

Explanations of the rule.

<sup>1</sup> 1 C. J. 697.

139.

<sup>2</sup> 2 C. J. 27. 344 ; 39 ib. 842.

<sup>4</sup> 22 H. D. 1 s. 51.

<sup>3</sup> 10 H. D. 1 s. 757 ; Colchester, ii.

asked his Majesty's permission to state what he knew, which, without his leave, he could not have divulged. The matter appears to have ended without any opinion being expressed by the Speaker or by the house.<sup>1</sup>

On the 9th May, 1843, Sir Robert Peel said, "On the part of her Majesty, I am authorized to repeat the declaration made by King William," in a speech from the throne, in reference to the legislative union between Great Britain and Ireland. On the 19th, an objection was raised to these expressions: but the Speaker, after noticing the irregularity of adverting to former debates, expressed his own opinion—

"That there was nothing inconsistent with the practice of the house in using the name of the sovereign in the manner in which the right hon. baronet had used it. It was quite true that it would be highly out of order to use the name of the sovereign in that house, so as to endeavour to influence its decision, or that of any of its members, upon any question under its consideration: but he apprehended that no expression which had fallen from the right hon. gentleman could be supposed to bear such a construction."

Lord John Russell explained that "the declaration of the sovereign was made by the right hon. baronet's advice, because any personal act or declaration of the sovereign ought not to be introduced into that place;" to which Sir Robert Peel added, "that he had merely confirmed, on the part of her Majesty, by the advice of the government, the declaration made by the former sovereign."<sup>2</sup> On the 2nd May, 1876, Mr. Disraeli said that he had her Majesty's authority to make a statement on her part: but, as the name of the sovereign could not be introduced in debate, it rested with the house whether he should proceed. The Speaker observed that "if the statement related to matters of fact, and was not made to influence the judgment of the house, he was not prepared to say that, with the indulgence of the house, her Majesty's name might not be introduced." Mr. Disraeli then proceeded to make a statement, on the authority of the Queen, in contradiction to Mr. Lowe, that her Majesty had never made proposals to any minister for a change of the royal titles.<sup>3</sup>

Words  
against  
Parlia-  
ment, or  
either  
house.

It is obviously unbecoming to permit offensive expressions against the character and conduct of Parliament to be used without rebuke; for they are not only a contempt of that high court, but are calculated to degrade the legislature in the estimation of the people. If directed

<sup>1</sup> 7 Chandler, Deb. 61. 64.

<sup>2</sup> 69 H. D. 3 s. 24. 574.

<sup>3</sup> 228 H. D. 3 s. 2037. See also 71 H. C. Deb. 5 s. 227.

against the other house, and passed over without censure, they would appear to implicate one house in discourtesy to the other; <sup>1</sup> if against the house in which the words are spoken, it would be impossible to overlook the disrespect of one of its own members. If, when called to order, the member fails to retract or explain his words and make a satisfactory apology, he may be punished by a reprimand or commitment <sup>2</sup> or under standing order No. 18 or No. 20 (see p. 302). It is most important that the use of such words should be immediately reprov'd in order to avoid complaints and dissensions between the two houses. In 1614, Dr. Richard Neile, Bishop of Lincoln, uttered some words which gave offence to the Commons, and they complained of them in a message to the Lords, to which they received an answer that the bishop protested, "upon his salvation, that he had not spoke anything with any evil intention to that house;" and the Lords assured them that, if they had conceived that the lord bishop's words meant to cast any aspersion of sedition upon that house, they would have censured the same with all severity. Their lordships added that hereafter no member of their house ought to be called in question, when there is no other ground thereof but public and common fame only.<sup>3</sup> In 1701, a complaint was made by the Commons of expressions used by Lord Haversham at a free conference, and numerous communications ensued which were terminated by a prorogation.<sup>4</sup> On the 14th December, 1641, and on the 20th May, 1642, exception being taken to words used by Lord Pierpoint, and by Lord Herbert of Cherbury, they were commanded to withdraw and were committed to the custody of the gentleman usher.<sup>5</sup> On the 14th March, 1770, exception was taken to a statement in debate by the Earl of Chatham, "that the late lord chancellor was dismissed for giving his vote in this house;" and the house resolved "that nothing had appeared to this house to justify his assertion."<sup>6</sup>

Disrespectful or abusive mention of a statute would seem to be partly open to the same objections as improper language applied to Parliament itself; for it imputes discredit to the legislature which passed it, and has a tendency to bring the law into contempt; Against a statute.

<sup>1</sup> 313 H. D. 3 s. 101; 319 ib. 303; 337 ib. 1104; 5 Parl. Deb. 4 s. 1842; 8 ib. 1780; 167 ib. 1771. The Speaker has condemned the use by a member of improper language directed against the House of Lords, in giving notice of a motion, 290 H. D. 3 s. 691. See also questions to ministers, p. 223, n. 9.

<sup>2</sup> 9 C. J. 147. 760; 10 ib. 512; 11 ib. 580. See also Mr. Duffy's case, 108 ib. 461.

<sup>3</sup> 2 L. J. 713; see also 4 ib. 582; 1 C. J. 496. 499, &c.; 3 Hatsell, 73.

<sup>4</sup> 13 C. J. 629. 634. 637. 639.

<sup>5</sup> 4 L. J. 475; 5 ib. 77.

<sup>6</sup> 32 L. J. 476.

though the necessity of the repeal of a law justifies, as an argument for that course, its condemnation in debate. A statement that the enactment of a law may justify an appeal to force is not within the cognizance of the chair.<sup>1</sup>

Matters  
pending  
judicial  
decision.

Matters awaiting the adjudication of a court of law should not be brought forward in debate. This rule was observed by Sir Robert Peel and Lord John Russell, both by the wording of the speech from the throne and by their procedure in the house, regarding Mr. O'Connell's case, and has been maintained by rulings from the chair.<sup>2</sup>

Reflec-  
tions on  
the  
sovereign,  
&c.

Unless the discussion is based upon a substantive motion, drawn in proper terms (see p. 248), reflections must not be cast in debate upon the conduct of the sovereign, the heir to the throne, or other members of the royal family,<sup>3</sup> the Viceroy and Governor-General of India, the Governor-General of Canada,<sup>4</sup> the Lord-Lieutenant of Ireland,<sup>5</sup> the Speaker,<sup>6</sup> the chairman of ways and means,<sup>7</sup> members of either house of Parliament,<sup>8</sup> or judges of the superior courts of the United Kingdom,<sup>9</sup> including persons holding the position of a judge, such as a judge of a Court of Bankruptcy or a county court.<sup>10</sup> Nor may opprobrious reflections be cast in debate on sovereigns and rulers over countries in amity with his Majesty.<sup>11</sup>

<sup>1</sup> 308 H. D. 3 s. 1108.

<sup>2</sup> 72 H. D. 3 s. 85. 98; 335 ib. 992. 1254. 1267; 337 ib. 889. See also the Speaker's remarks in ruling out of order the discussion of allegations of bribery and corruption at an election before the expiration of the period during which an election petition could be lodged, 64 Parl. Deb. 4 s. 868.

<sup>3</sup> 312 H. D. 3 s. 1061; 338 ib. 1338; 33 Parl. Deb. 4 s. 896; 93 ib. 1362; 97 ib. 1164; 99 ib. 471.

<sup>4</sup> 15 H. C. Deb. 5 s. 894.

<sup>5</sup> 137 Parl. Deb. 4 s. 1045; 44 H. C. Deb. 5 s. 2122.

<sup>6</sup> 140 C. J. 78; 311 H. D. 3 s. 954; 313 ib. 472; 142 Parl. Deb. 4 s. 1507.

<sup>7</sup> 302 H. D. 3 s. 1710; 95 Parl. Deb. 4 s. 235.

<sup>8</sup> Lord Chancellor, 56 Parl. Deb. 4 s. 859; 75 ib. 890; 156 ib. 597; ex-Lord Chancellor, 167 Parl. Deb. 4 s. 1367; a peer, 60 H. C. Deb. 5 s. 279. See Speaker's ruling, that the explicit statement of the prime minister must be accepted, 280 H. D. 3 s. 116. Discussion of the conduct

of the chairman of a joint committee on a bill has been ruled out of order in committee on the re-committed bill, 111 Parl. Deb. 4 s. 19. 27. 707; 196 ib. 363. 568.

<sup>9</sup> 234 H. D. 3 s. 1558; 238 ib. 1953; 276 ib. 984; 286 ib. 1732; 313 ib. 637; 315 ib. 1530; 322 ib. 463; 12 Parl. Deb. 4 s. 1807; 14 ib. 1090; 36 ib. 201; 52 ib. 23; 75 ib. 891; 96 ib. 306; 132 ib. 683. 696; 163 ib. 507; 183 ib. 807; 30 H. C. Deb. 5 s. 1170; 41 ib. 2779. Reflections against the judges generally are equally out of order, 26 ib. 1082. The Speaker has also intimated that the same rule should be applied to the case of judges in India and other parts of the empire, 40 ib. 622.

<sup>10</sup> 312 H. D. 3 s. 1110; 320 ib. 1024. 1031; 164 Parl. Deb. 4 s. 1572. The Speaker has also ruled out of order language disrespectful to persons administering justice, such as resident magistrates in Ireland, 103 Parl. Deb. 4 s. 462.

<sup>11</sup> 237 H. D. 3 s. 1639; 238 ib. 799; 46 Parl. Deb. 4 s. 892; 190 ib. 254; 6 H. C. Deb. 5 s. 806; 88 ib. 116.

In order to guard against all appearance of personality in debate, it was formerly the rule in both houses that no member should refer to another by name. In the upper house, however, a lord is now alluded to by name, but in the Commons each member must be distinguished by the office he holds, by the place he represents or by other designations, as "the noble lord the secretary of state for foreign affairs," "the honourable" or "right honourable gentleman the member for York," or "the honourable and learned member who has just sat down."<sup>1</sup>

The use of temperate and decorous language is never more desirable than when a member is canvassing the opinions and conduct of his opponents in debate. The imputation of bad motives, or motives different from those acknowledged;<sup>2</sup> misrepresenting the language of another, or accusing him, in his turn, of misrepresentation;<sup>3</sup> charging him with falsehood or deceit;<sup>4</sup> or contemptuous or insulting language of any kind;<sup>5</sup>—all these are unparliamentary, and call for prompt interference.<sup>6</sup> The same right to claim courteous

Personal  
allusions.  
  
Allegations  
against  
members.

<sup>1</sup> Burton, iii. 140. 141, 8th Feb. 1655. Mr. Berkeley was called to order, 20th March, 1860, for referring to members by name, as having spoken, in former sessions, against the ballot, 157 H. D. 3 s. 939.

<sup>2</sup> 176 H. D. 3 s. 1005; 125 Parl. Deb. 4 s. 1530; 133 ib. 748; 155 ib. 261.

<sup>3</sup> 2 Cav. Deb. 118. 120; 171 Parl. Deb. 4 s. 376.

<sup>4</sup> 96 H. D. 3 s. 1206; 187 ib. 953; 223 ib. 1015; 314 ib. 258; 92 Parl. Deb. 4 s. 159; 155 ib. 915. 917; 9 H. C. Deb. 5 s. 215; 74 ib. 1050. As to the words "calumnious charges," see 137 H. D. 3 s. 1895; 176 ib. 1003; 186 ib. 441; 201 ib. 1455.

<sup>5</sup> "Dodgè" ruled to be an unparliamentary expression, 193 H. D. 3 s. 1297; so also "factious opposition," ib. 1741; "jockeyed," 198 ib. 521; "hypocritical lovers of liberty," 237 ib. 1639; "villains," 130 C. J. 377. 397, 225 H. D. 3 s. 1824, 226 ib. 178; "impertinence," 230 ib. 863; 181 Parl. Deb. 4 s. 304; "rude remarks," 320 H. D. 3 s. 763, 164 Parl. Deb. 4 s. 1188; "gross calumny," 106 Parl. Deb. 4 s. 1257; "impudence," 92 ib. 968; "ruffianism," 99 ib. 1065; "wind-bag," 139 ib. 654; "hypocrites, pharisees," 102 ib. 1002; 189 ib. 1162; "slanderer," 164 ib. 1254; "traitor,"

28 H. C. Deb. 5 s. 1519; 29 ib. 2347; 72 ib. 28; alleging that a member's statements were "cowardly," 186 H. D. 3 s. 173; 146 Parl. Deb. 4 s. 1490; 183 ib. 1576; "offensive," 213 H. D. 3 s. 749; "not consonant with personal honour," 143 Parl. Deb. 4 s. 1542; "a malignant slander," 105 ib. 579; "scurrilous," 150 ib. 274; "dishonest," 159 ib. 1152; "a scandal," 183 ib. 1576; "vicious and vulgar," 183 ib. 795; "insulting," 74 H. C. Deb. 5 s. 1947; "a malignant attack," ib.; or that a member's action was "shabby," 212 H. D. 3 s. 222; amounted to "a dirty trick," 132 Parl. Deb. 4 s. 507; was "criminal," 105 ib. 1072; "disgraceful," 143 ib. 827; "a type of scandal," 69 ib. 546; "corrupt," 184 ib. 909. 1462; that a member had been "detected in the grossest practices of corruption," 211 H. D. 3 s. 852; and accusing a member of having "deliberately raised a false issue," 205 H. D. 3 s. 1743; and having "passed a somewhat impertinent censure," 206 ib. 1685; or alleging that the figures supplied by a minister were "gerrymandered," 147 Parl. Deb. 4 s. 242; or "that a member was returned by the refuse of a large constituency," 188 H. D. 3 s. 1894.

<sup>6</sup> A charge that a member has obstructed the business of the house, or that

treatment in debate is due alike between both houses of Parliament; and abusive language, and imputations of falsehood, uttered by members of the House of Commons against members of the House of Lords have been met by the immediate intervention of the chair to compel the withdrawal of the offensive words,<sup>1</sup> or, in default, by the punishment of suspension.<sup>2</sup>

In the  
Lords.

The rules of the House of Lords upon this point are very distinctly laid down in standing order No. 28, which directs "that all personal, sharp, or taxing speeches be forborne" in the house; and that if any offence be given of that kind, the house "will sharply censure the offender."<sup>3</sup>

Words of  
heat.  
Lords.

On the 10th December, 1766, notice was taken of some words that had passed between the Duke of Richmond and the Earl of Chatham; upon which they were required by the house to declare upon their honour "that they would not pursue any further resentment."<sup>4</sup> The Lords also, to prevent quarrels in debate between their members,<sup>5</sup> have ordered, by standing order No. 29, that a lord who conceives himself to have received an affront or injury from another member within the precincts of the house, shall appeal to the Lords in Parliament for his reparation; or shall, if he declines the justice of the house, undergo their severe censure. The Lords have extended this principle sometimes to the prevention of quarrels which have arisen out of the house. On the 6th November, 1780, the Lords being informed that the Earl of Pomfret had sent a challenge to the Duke of Grafton, upon a matter unconnected with the debates or proceedings of Parliament, declared the earl "guilty of a high contempt of this house," and committed him to the Tower.<sup>6</sup>

Commons.

The House of Commons will insist upon all offensive words being withdrawn, and upon an ample apology being made, which shall satisfy both the house and the member to whom offence has been given.<sup>7</sup> If the apology be refused, or if the offended member decline to express his satisfaction, the house takes immediate measures for preventing the quarrel from being pursued further, by committing both the members to the custody of the Serjeant; whence they are

a speech is an abuse of the rules of the house is not out of order, 308 H. D. 3 s. 1170; 125 Parl. Deb. 4 s. 945; 6 H. C. Deb. 5 s. 2046.

<sup>1</sup> 298 H. D. 3 s. 101; 299 ib. 1792; 302 ib. 230; 308 ib. 937; 313 ib. 303.

<sup>2</sup> 145 C. J. 72, 341 H. D. 3 s. 1570.

<sup>3</sup> 12 L. J. 31; Mirror of Parliament,

1833, p. 2855.

<sup>4</sup> 31 L. J. 448.

<sup>5</sup> 16 L. J. 378; Earl Rivers, 8th Feb. 1698.

<sup>6</sup> 36 L. J. 191.

<sup>7</sup> 78 C. J. 224; 96 ib. 401; 103 ib. 442. 443; 107 ib. 143; 117 ib. 64, 165 H. D. 3 s. 617; 167 ib. 854; 183 ib. 801.



not released until they have submitted themselves to the house and given assurance that they will not engage in hostile proceedings.<sup>1</sup> In 1770, words of heat having arisen between Mr. Fox and Mr. Wedderburn, the former rose to leave the house, upon which the Speaker ordered the Serjeant to close all the doors, so that neither Mr. Fox nor Mr. Wedderburn should go out till they had promised the house that no further notice should be taken of what had happened.<sup>2</sup> If words of heat arise in a committee of the whole house, they are reported by the chairman, and the house interposes its authority to restrain any hostile proceedings.<sup>3</sup>

The Commons will also interfere to prevent quarrels between members, arising from personal misunderstanding in a select committee, as in the case of Sir Frederick Trench and Mr. Rigby Wason, on the 10th June, 1836. One of those gentlemen, on refusing to assure the house that he would not accept a challenge *sent from abroad*, was placed in custody; and the other, by whom the challenge was expected to be sent, was also ordered to be taken; nor was either of them released until they had given the house satisfactory assurances of their quarrel being at an end.<sup>4</sup> The sending of a challenge by one member to another, in consequence of words spoken by him in his place in Parliament, is a breach of privilege, and is dealt with accordingly, unless a full and ample apology be offered to the house.<sup>5</sup> It does not appear that the Speaker or the house would interfere to prevent a quarrel from being proceeded with, where it had arisen from a private misunderstanding, and not from words spoken in debate or in any proceedings of the house or of a committee. In such cases, if any interference should be deemed necessary, information would probably be given to the police. But in 1701, Mr. Mason, a member, having sent a challenge to Mr. Molyneux, a merchant, the house required his assurance that the matter should go no further.<sup>6</sup>

Challenges  
and  
quarrels.

<sup>1</sup> 8 H. D. 2 s. 1091; 89 C. J. 9. 11; 91 ib. 484. 485; 92 ib. 270; 93 ib. 657. 660.

<sup>2</sup> MS. Officers and Usages of the House of Commons, 1805, p. 138.

<sup>3</sup> 106 C. J. 313.

<sup>4</sup> 91 C. J. 464. 468, 34 H. D. 3 s. 410. 486.

<sup>5</sup> Case of Mr. Roebuck and Mr. Somers, 16th June, 1845, 100 C. J. 589, 81 H. D. 3 s. 601. Notice taken of a challenge sent to a member, on remarks made outside the house, which touched proceedings

in the house, 31st May, 1883, 138 C. J. 232. In 1798, the Speaker did not interfere to prevent the duel between Mr. Pitt and Mr. Tierney: but went to Putney, where it was fought, Sidmouth, i. 204. 206.

<sup>6</sup> Private memorandum, 22nd Feb. 1849. But see 13 C. J. 444; also case when offensive language had been used, in the division lobby, concerning a speech delivered at a public meeting, 122 ib. 221.

Words  
taken  
down.

When disorderly words are used by a member in debate, notice should be immediately taken of the words objected to;<sup>1</sup> and if a member desires that the words be taken down, he must repeat the words to which he objects, and state them to the house exactly as he conceives them to have been spoken. Then the Speaker or the chairman, if in his opinion the words are disorderly,<sup>2</sup> having ascertained the sense of the house or the committee, directs the Clerk to take down the words to which objection has been taken.<sup>3</sup> Even the Speaker's own words have been taken down.<sup>4</sup> The Commons have agreed "that when any member had spoke between, no words which had passed before could be taken notice of, so as to be written down in order to a censure."<sup>5</sup> On the 9th April, 1807, the Speaker decided that certain words could not be taken down, though a member had immediately risen to order and objected to the words used, because another member and the Speaker had spoken to the question of order, before the house expressed a wish to have the words taken down.<sup>6</sup> When objection was taken to words, after a question put from the chair, it was ruled to be too late.<sup>7</sup> This rule applies, if the member is permitted to continue his speech without interruption; and in the Lords, also, the words are required to be taken down *instantly*.<sup>8</sup> If the words be taken down in a committee of the whole house, they are reported forthwith, to be dealt with by the house.<sup>9</sup> Failing the tender of explanation or apology, the consideration of the matter is appointed for the next sitting, and the member incriminated is ordered to attend. Immediate complaint to the chair is, however, the most effective mode of dealing with offensive words.

Citing  
docu-  
ments not  
before the  
house.

Another rule, or principle of debate, may be here added. A minister of the Crown is not at liberty to read or quote from a despatch or other state paper not before the house, unless he be prepared to lay it upon the table. This restraint is similar to the rule of evidence in courts of law, which prevents counsel from citing documents which have not been produced in evidence. The principle

<sup>1</sup> 165 H. D. 3 s. 622; 268 ib. 196.

<sup>2</sup> Regarding the Speaker's discretion in giving the direction, see 2 Hatsell, 272, n.; also 115 H. D. 3 s. 278; 235 ib. 1806.

<sup>3</sup> 2 Hatsell, 269; 66 C. J. 391; 68 ib. 322; 247 H. D. 3 s. 1382; 270 ib. 365; 272 ib. 1563.

<sup>4</sup> 16th Feb. 1770, 1 Cav. Deb. 463.

<sup>5</sup> 2 Hatsell, 269, n.

<sup>6</sup> 9 H. D. 1 s. 326.

<sup>7</sup> 205 H. D. 3 s. 403.

<sup>8</sup> 48 H. D. 3 s. 321.

<sup>9</sup> Case of Mr. More, 3rd June, 1626, 1 C. J. 866; of Mr. Shippen, 4th Dec. 1717, 18 ib. 653; 108 ib. 461, 466; 132 ib. 375, 235 H. D. 3 s. 1810; 134 C. J. 316; 272 H. D. 3 s. 1561, 1565; 148 C. J. 469.

is so reasonable that it has not been contested; and when the objection has been made in time, it has been generally acquiesced in. It has also been admitted that a document which has been cited ought to be laid upon the table of the house, if it can be done without injury to the public interests.<sup>1</sup> The same rule, however, cannot be held to apply to private letters or memoranda. On the 18th May, 1865, the attorney-general, on being asked by Mr. Ferrand if he would lay upon the table a written statement and a letter to which he had referred on a previous day, in answering a question relative to the Leeds Bankruptcy Court, replied that he had made a statement to the house upon his own responsibility, and that, the documents he had referred to being private, he could not lay them upon the table. Lord Robert Cecil contended that the papers, having been cited, should be produced: but the Speaker declared that this rule applied to public documents only.<sup>2</sup> On the 10th August, 1893, the Speaker ruled that confidential documents or documents of a private nature passing between officers of a department and the department, cited in debate, are not necessarily laid on the table of the house, especially if the minister declares that they are of a confidential nature.<sup>3</sup> Indeed, it is obvious that, as the house deals only with public documents in its proceedings, it could not thus incidentally require the production of papers which, if moved for separately, would be refused as beyond its jurisdiction. Members not connected with the government have also cited documents in their possession, both public and private,<sup>4</sup> which were not before the house: but though the house is equally unable to form a correct judgment from partial

<sup>1</sup> See motion of Mr. Adam, 4th March, 1808, to censure Mr. Canning for having read to the house despatches and parts of despatches, none of which had then been communicated to the house, and some of which the house had determined should not be produced, 10 H. D. 1 s. 898, Colchester, ii. 141. Mr. Canning and Mr. Tierney, 11th Feb. 1818, 37 H. D. 1 s. 338. Debate in committee of supply, 17th July, 1857 (Sir C. Wood), 146 H. D. 3 s. 1759. See debate, 23rd May, 1862, on the Longford Election, in which Sir Robert Peel referred to information received by the government without citing documents; and comments made upon this course, and precedents cited, 166 ib. 2128-31. Also statement of rule by Viscount Palmerston, 12th May, 1863, 170 H. D. 3 s.

1585, and 176 ib. 962; 179 ib. 489; 235 ib. 935; 319 ib. 1859, 1869; 336 ib. 651; 54 H. C. Deb. 5 s. 2345. See also debate, 11th March, 1903, when a minister quoted the evidence given before a military court of inquiry, and the Speaker's statement, 16th March, that the rule of debate had been complied with by laying upon the table the evidence of the witness quoted, 119 Parl. Deb. 4 s. 501, 570, 858. A minister, who summarises a correspondence but does not actually quote from it, is not bound to lay it upon the table, 151 ib. 814.

<sup>2</sup> 179 H. D. 3 s. 489; see also 282 ib. 2108.

<sup>3</sup> 15 Parl. Deb. 4 s. 1778.

<sup>4</sup> 137 H. D. 3 s. 261; 280 ib. 250.

extracts, inconvenient latitude has sometimes been permitted, which it is doubtful whether any rule but that of good taste could have restrained.

Law  
officers'  
opinions.

The opinions of the law officers of the Crown, being confidential, are not usually laid before Parliament or cited in debate; and their production has frequently been refused: but if a minister deems it expedient that such opinions should be made known for the information of the house, he is entitled to cite them in debate.<sup>1</sup>

Restric-  
tions upon  
debate.

The rules of Parliament are designed to afford every legitimate opportunity of discussion, to ensure reasonable delays in the passing of important measures, and to guard the rights of minorities; <sup>2</sup> and freedom of debate has been maintained and observed by the rules and usages of both houses, with rare patience and self-denial.<sup>3</sup> It became obvious, however, that these salutary rules could be strained and perverted in the House of Commons for purposes of obstruction, and that such a course, if persisted in, would frustrate the power and authority of Parliament. On the 25th July, 1877, the Speaker declared "that any member wilfully and persistently obstructing public business, without just and reasonable cause, is guilty of a contempt of this house, and would be liable to such punishment, whether by censure, by suspension from the service of the house, or by commitment, as the house may adjudge."<sup>4</sup> The necessity for a revision of the standing orders to secure the due transaction of public business and to maintain the dignity of the house became obvious, and the matter was considered by a select committee in 1878.<sup>5</sup>

Sus-  
pension of  
members.  
S. O. 18,  
Appendix  
I.

On the 28th February, 1880, a standing order,<sup>6</sup> which was amended on the 22nd November, 1882, was passed, providing for the suspension from the service of the house, on question put forthwith, of a member who should be named by the Speaker, or the chairman of

<sup>1</sup> 177 H. D. 3 s. 354. 355.

<sup>2</sup> Jeremy Bentham contrasts the liberal spirit of the English Parliament with the intolerance of revolutionary France. "In France, the terrible decrees of urgency, the decrees for closing the discussion, may well be remembered with dread; they were formed for the subjugation of the minority—for the purpose of stifling arguments which were dreaded."—*Political Tactics*, Works, ii. 361.

<sup>3</sup> On the 12th March, 1771, the minority divided the house twenty-three times, in resisting the punishment of the

printers of the debates; and Burke said of these proceedings, "Posterity will bless the pertinacity of that day," 2 Cav. Deb. 377. 395.

<sup>4</sup> 132 C. J. 375.

<sup>5</sup> Parl. Pap. (H. C.) sess. 1878, No. 268.

<sup>6</sup> Occasions when this standing order was put in force: 136 C. J. 31. 56. 111. 418, 258 H. D. 3 s. 69–88; 137 C. J. 149. 322. 346. 395. 483, 271 H. D. 3 s. 1127. 1262, 273 ib. 1280; 151 C. J. 242; 156 ib. 62. 352. 355; 157 ib. 123. 437; 163 ib. 404; 167 ib. 340; 168 ib. 37; 171 ib. 155.

a committee of the whole house, whether he be the chairman of ways and means or any other chairman,<sup>1</sup> for committing the offence of disregarding the authority of the chair, or of abusing the rules of the house by persistently and wilfully obstructing the business of the house, or otherwise.<sup>2</sup> One member only may be named at the same time unless several members, present together, have jointly disregarded the authority of the chair. Suspension under the standing order as amended, 22nd November, 1882, lasted on the first occasion, for a week; on the second, for a fortnight; and on any subsequent occasion, for a month; but these periods of time were taken out of the standing order in the course of its amendment in session 1902 with a view to the substitution of other periods.<sup>3</sup> As these however were not agreed upon by the house, the suspension of a member under the standing order continues for the session<sup>4</sup> unless the house terminate it sooner.<sup>5</sup> An amendment of the standing order made on the 7th March, 1901, had already provided that if through the refusal of a member who had been suspended to withdraw from the house the Speaker has to call the attention of the house to the fact that force was necessary to compel obedience to his direction,<sup>6</sup> such member is thereupon without further question put suspended during the remainder of the session.<sup>7</sup> Notices standing in the name of a suspended member are removed from the notice paper of each day as it is made out, as long as his suspension lasts.<sup>8</sup> The offence must arise in the house, and be dealt with at once. No motion can be made that a suspended member be heard at the bar.<sup>9</sup>

The Speaker or the chairman of a committee of the whole house is With-empowered under standing order No. 20 to order a member whose drawal of conduct is grossly disorderly to withdraw immediately from the member. S. O. 20, house during the remainder of that day's sitting;<sup>10</sup> or if the Speaker Appendix I.

<sup>1</sup> 332 H. D. 3 s. 991.

<sup>2</sup> The words, "or otherwise," apply to any form of disorder which it is the duty of the chair to restrain, 294 H. D. 3 s. 1421; 142 C. J. 173. 407. Proceedings on such a motion are exempt from interruption under standing order No. 1, 103 Parl. Deb. 4 s. 237.

<sup>3</sup> 157 C. J. 63.

<sup>4</sup> 105 Parl. Deb. 4 s. 727; 84 H. C. Deb. 5 s. 2081.

<sup>5</sup> 157 C. J. 130; 167 ib. 349; 168 ib. 75; 171 ib. 211. Although a motion to rescind or terminate the suspension of a member is not entitled to priority as a privilege

motion, the Speaker has accorded priority to such a motion when it appeared that the member had been reported in error for disregarding the authority of the chair, 90 Parl. Deb. 4 s. 699. 831.

<sup>6</sup> *E.g.* 151 C. J. 242; 156 ib. 62. The Speaker has suspended the sitting under standing order No. 21 until a member, who had been named but refused to leave the house, should have been removed, 171 ib. 155, 84 H. C. Deb. 5 s. 1861.

<sup>7</sup> 156 C. J. 67.

<sup>8</sup> 90 Parl. Deb. 4 s. 1048.

<sup>9</sup> 313 H. D. 3 s. 1126-8.

<sup>10</sup> 331 H. D. 3 s. 732; 148 C. J. 424;

or the chairman deems that the powers conferred by this standing order are inadequate to deal with the offence, he may, in accordance with standing order No. 18, name such member; or he may call on the house to adjudge upon his conduct.

With-  
drawal  
from the  
precincts.

Members ordered to withdraw in pursuance of this standing order, or suspended from the service of the house in pursuance of standing order No. 18, must withdraw forthwith from the precincts of the house,<sup>1</sup> subject, however, in the case of members under suspension to the proviso regarding their service on private bill committees.

Provisions  
for faci-  
litating  
conduct of  
business.

Temporary provision was made by the urgency resolutions of sessions 1881 and 1882, to facilitate the consideration of several important bills;<sup>2</sup> and in subsequent sessions resolutions have been agreed to by the house prescribing the conditions under which and the times at which, the outstanding stages of bills and other business should be concluded (see p. 318). The transaction of business has been furthered by providing for the classification, on the notice paper, of bills other than government bills, after Whitsuntide (see p. 232), and for the appointment of motions for the introduction of bills, and for the nomination of select committees at the commencement of business (see p. 229). By standing order No. 51, with few exceptions,

S. O. 6,  
Appendix  
I.  
S. O. 11,  
Appendix  
I.  
S. O. 51,  
Appendix  
I.

151 ib. 242; 152 ib. 265; 153 ib. 96, &c. For using insulting language to the chair during the progress of a division, 155 C. J. 380; for refusing to discontinue a speech, 163 ib. 403. A member who did not withdraw after being directed to do so by the chairman in committee of the whole house was reminded by the chairman of the direction that he had given him on attention being called to his presence. On his refusing to withdraw he was named for disregarding the authority of the chair and suspended, 168 C. J. 37.

<sup>1</sup> The area within the walls of the palace of Westminster compose the parliamentary precincts, Select Committee (Privilege), Parl. Pap. (H. C.) sess. 1888, No. 411, Q. 1164; 85 H. C. Deb. 5 s. 1426. When suspension is ordered on a motion not made pursuant to standing order No. 18, withdrawal from the precincts of the house if desired must be obtained by express terms in the resolution for suspension, 146 C. J. 481; 313 H. D. 3 s. 1417. For the extent of exclusion enforced in the case of Mr. Bradlaugh, when ordered to withdraw from the house,

and of members suspended from its service before standing order No. 20, see 136 C. J. 227, 261 H. D. 3 s. 182; 274 ib. 1857; 313 ib. 1417.

<sup>2</sup> 136 C. J. 57, 60, 65, 78, 83, 123; 137 ib. 328, 332. Pursuant to these resolutions, a minister of the Crown, by a motion which declared that the state of public business was urgent (the question being put thereon forthwith, and decided by a majority of three to one in a house of not less than 300), was enabled to vest in the Speaker "the powers of the house for the regulation of its business." The Protection of Person and Property (Ireland) Bill, and the Peace Preservation (Ireland) Bill, in session 1881, and the Prevention of Crime (Ireland) Bill, in session 1882, were dealt with accordingly under rules laid upon the table of the house by the Speaker. A power conferred by these rules of ensuring the completion, at a prescribed hour, of the consideration of a bill in committee and on report was used in 1881, 136 C. J. 85, 92, 113, 117. A motion to apply urgency to votes in supply failed, 136 ib. 124.

the Speaker leaves the chair forthwith for a committee of the house (see p. 405).

The rules to be observed by members present in the house during a debate are to keep their places; to enter or leave the house with decorum; not to cross the house irregularly; not to read books, newspapers, or letters; to maintain silence; not to hiss or interrupt.<sup>1</sup>

Rules to be observed by members not speaking.

By standing order No. 19, the lords are directed to keep their dignity and order in sitting, and not to move out of their places without just cause; and that when they cross the house, they are to make obeisance to the cloth of estate.

To keep their places. Lords.

By the resolutions of 10th February, 1698, and 16th February, 1720, members of the House of Commons are ordered to keep their places, and not walk about the house, or stand at the bar or in the passages.<sup>2</sup> If, after a call to order, members who are standing at the bar or elsewhere do not disperse, the Speaker orders them to take their places; when it becomes the duty of the Serjeant-at-arms to clear the gangway and to enforce the order of the Speaker, by desiring those members who still obstruct the passage immediately to take their places (see p. 188). If they refuse or neglect to comply, or oppose the Serjeant in the execution of his duty, he may report their names to Mr. Speaker.

Commons.

Members of the Commons who enter or leave the house during a debate must be uncovered and should make an obeisance to the chair while passing to or from their places.<sup>3</sup>

Entering and leaving the house.

In the Lords it has been seen that care should be taken in the manner of crossing the house, and it is especially irregular to pass between the woolsack and any peer who is addressing their lordships, or between the woolsack and the table. In the Commons, members are not to cross between the chair and a member who is speaking,<sup>4</sup> or between the chair and the table, or between the chair and the mace, when the mace is taken off the table by the Serjeant. When they cross the house, or otherwise leave their places, they should make obeisance to the chair.

Crossing before members speaking. Lords. Commons.

Members are not to read books, newspapers or letters in their places.<sup>5</sup> This rule, however, must now be understood with some limitations; for although it is still irregular to read newspapers, any books and

Reading of books, etc.

<sup>1</sup> For the order, "That no member do presume to take tobacco in the gallery of the house or at a committee table," see 11 C. J. 137.

<sup>2</sup> 12 C. J. 496; 19 ib. 425.

P.

<sup>3</sup> D'Ewes, 282; 2 Hatsell, 232.

<sup>4</sup> Permissible when a member speaks from the third or any higher bench from the floor.

<sup>5</sup> 4 C. J. 51.

letters may be referred to by members preparing to speak, but ought not to be read for amusement or for business unconnected with the debate.

**Silence.** Silence is required to be observed in both houses. In the Lords, it is ordered, by standing order No. 24—

**Lords.** “If any lord has occasion to speak with another lord while the house is sitting, they are to retire to the Prince’s Chamber, and not converse in the space behind the woosack, or else the Lord Speaker is to call them to order, and, if necessary, to stop the business in agitation.”

**Commons.** In the Commons, all members should be silent, or should converse only in a whisper. Whenever the conversation is so loud as to make it difficult to hear the debate, the Speaker calls the house to order. On the 5th May, 1641, it was resolved—

“That if any man shall whisper or stir out of his place to the disturbance of the house at any message or business of importance, Mr. Speaker is ordered to *present his name* to the house, for the house to proceed against him as they shall think fit.”<sup>1</sup>

**Hissing or interruption.** Members are not to disturb a member who is speaking, by hissing, exclamations or other interruption; and the resolution of the house, 22nd January, 1693, enjoins “that Mr. Speaker do call upon the member, by name, making such disturbance; and that every such person shall incur the displeasure and censure of the house.”<sup>2</sup> This rule is too often disregarded. In the House of Commons, disorderly noises are sometimes made, which, from the fulness of the house, and the general uproar maintained when five or six hundred members are impatiently waiting for a division, it is scarcely possible to repress. On the 19th March, 1872, while strangers were excluded, notice was taken of the crowing of cocks, and other disorderly noises, proceeding from members, principally behind the chair; and the Speaker condemned them as gross violations of the orders of the house and expressed the pain with which he had heard them.<sup>3</sup>

**Cries of “hear, hear,” &c.** There are words of interruption which, if used in moderation, are not unparliamentary; but when frequent and loud, cause serious disorder; such as the cries of “question,” “order, order,” “hear, hear,” or “divide, divide,” which have been sanctioned by long parliamentary usage in both houses. When intended to denote approbation of the sentiments expressed, and not uttered till the

<sup>1</sup> 2 C. J. 135.

<sup>11</sup> ib. 66.

<sup>2</sup> 1 C. J. 152. 473; see also motions against hissing, &c., 1604, 1 ib. 243. 935;

<sup>3</sup> 210 H. D. 3 s. 307.



end of a sentence, the cry of "hear, hear," offers no interruption to the speech. The same words may be used for very different purposes, and instead of implying approbation, they may express dissent, derision or contempt. Whenever exclamations of this kind are obviously intended to interrupt a speech, the Speaker calls the house to order, and, if the cries are persisted in, he names the disorderly members according to ancient usage;<sup>1</sup> or puts in force standing order No. 18 or No. 20. If the interruption should be so continuous and prolonged as to constitute a state of grave disorder<sup>2</sup> the Speaker puts in force standing order No. 21 (see p. 204).

A gross form of interruption, by loud cries of "shame," has been strongly condemned by the Speaker, who declared his intention to take notice of the committal of the offence.<sup>3</sup>

On the 15th December, 1792, Mr. Whitmore, having disturbed the debate by a disorderly interruption, was "named" by the Speaker, and directed by the house to withdraw.<sup>4</sup> On the 8th June, 1852, "complaint being made by a member in his place, that Mr. Feargus O'Connor had been guilty of misbehaviour to him, Mr. Speaker informed Mr. O'Connor that if he persisted in such conduct, it would be necessary for him to call the particular attention of the house towards him, in order that the house might take such steps as would prevent a repetition of it for the future. Upon which Mr. O'Connor rose in his place, and addressed the house, without expressing his regret for what had occurred. Whereupon Mr. Speaker called upon him *by name*; and Mr. O'Connor then apologized to the house for his misconduct."<sup>5</sup> On the 3rd February, 1881, Mr. Dillon, Mr. Parnell, Mr. Finigan, Mr. O'Kelly and Mr. O'Donnell, having persisted in repeated interruptions of Mr. Gladstone, who had been called upon by Mr. Speaker to move a resolution of which he had given notice and was in possession of the house, were named and suspended.<sup>6</sup> On the 2nd September, 1886, whilst a division was in progress, complaint was made of offensive words addressed by one member to another. They were heard sitting and covered; and then the Speaker recommended that the division should be completed. After the declaration of the numbers, the Speaker informed

Cry of  
"shame."

Misbe-  
haviour to  
members  
in the  
house.

<sup>1</sup> 1 C. J. 483; 2 ib. 135; see anecdotes of Mr. Speaker Onslow and Sir Fletcher Norton, as to the calling of members by name, Sidmouth, i. 69, *n.*; 2 H. D. 1 s. 197. The case of Major O'Gorman, 6th August, 1878, 242 H. D. 3 s. 1380. 1438.

<sup>2</sup> 43 H. C. Deb. 5 s. 2054; 44 ib. 33.

<sup>3</sup> 310 H. D. 3 s. 166; 12 Parl. Deb. 4 s. 731. 790; 14 ib. 469. 472.

<sup>4</sup> 48 C. J. 11. 13, 30 Parl. Hist. 113.

<sup>5</sup> 107 C. J. 277.

<sup>6</sup> 136 C. J. 55, 258 H. D. 3 s. 68.

the house that, as the words had been uttered in the house, the matter came under his cognizance; and that he was authorized by both the members to tender to the house due expressions of regret and of apology for the occurrence.<sup>1</sup> On the 4th May, 1887, complaint having been made of insulting words directed against certain members of the house by a member standing below the bar, the Speaker directed the Clerk to take down the words. The Speaker then, having sought for an explanation from the member who had so offended, required him to withdraw the words and to apologize to the house.<sup>2</sup>

Interrup-  
tions in  
com-  
mittee.

Indecent interruptions of the debate or proceedings, in a committee of the whole house, are regarded in the same light as similar disorders while the house is sitting. On the 27th February, 1810, the committee on the Expedition to the Scheldt reported that a member had misbehaved himself during the sitting of the committee, making use of profane oaths and disturbing their proceedings. Mr. Fuller, the member complained of, was heard to excuse himself; in doing which he gave great offence by repeating and persisting in his disorderly conduct; upon which Mr. Speaker called upon him *by name*, and he was ordered to withdraw. It was immediately ordered, *nemine contradicente*, that "for his offensive words and disorderly conduct he be taken into the custody of the Serjeant." The member further aggravated his offence by breaking from the Serjeant and returning into the house in a very violent and disorderly manner, whence he was removed by the Serjeant and his messengers, upon an order given by the Speaker.<sup>3</sup> On the 9th June, 1852, the house being in committee, Mr. Feargus O'Connor interrupted the proceedings of the committee by disorderly and offensive conduct towards a member, and the chairman was directed to report the same to the house. On the Speaker resuming the chair, a motion was made that Mr. O'Connor do attend in his place forthwith: but it was represented that on the previous day he had been disorderly and had apologized, and that it was fruitless to deal with him again in the same manner. While his conduct was under discussion, he twice entered the house and approached the chair of Mr. Speaker, and then withdrew. It was thus obvious to the house that he must be dealt with summarily; and it was accordingly ordered, *nemine contradicente*, that for his disorderly conduct and contempt of the

<sup>1</sup> 141 C. J. 347, 308 H. D. 3 s. 1165. 413.

<sup>2</sup> 142 C. J. 211; see also 143 ib. 410.

<sup>3</sup> 65 C. J. 134.

house, he be taken into the custody of the Serjeant-at-arms.<sup>1</sup> On the declaration of the numbers taken at a division in committee, an interchange of insulting words between two members formed the subject of complaint: but, after an explanation, the words were mutually withdrawn.<sup>2</sup>

In cases of disorder the jurisdiction of the house is also extended to the lobbies. On the 11th April, 1877, on the numbers being declared after a division, complaint was made to the house by Mr. Sullivan of an offensive expression addressed to him by Dr. Kenealy, in the side lobby, during the division just taken. Mr. Speaker observed that, had the expression complained of been used in the house, it would have been his duty to deal with the matter on his own authority: but, as the complaint referred to words used in the lobby, he left it to the consideration of the house and called upon Dr. Kenealy to explain his conduct. Dr. Kenealy was heard in his place; and, having admitted that he had used the expression complained of, desired to submit his conduct to the decision of the house: after which he withdrew. It was then resolved that he be ordered to withdraw the offensive expression and to apologize to the house for having used it. Dr. Kenealy being called in, the Speaker acquainted him with the resolution of the house, and he withdrew the offensive expression complained of and apologized to the house for having used it.<sup>3</sup> On a subsequent occasion, 18th July, 1887, insulting words addressed by a member to another member in the outer lobby were brought under the cognizance of the house.<sup>4</sup>

In the enforcement of all these rules for maintaining order, the Speaker of the House of Lords has no more authority than any other peer, except in so far as his own personal weight and the dignity of his office may give effect to his opinions and secure the concurrence of the house. The result of his imperfect powers is that a peer who is disorderly is called to order by another peer, perhaps of an opposite party; and that an irregular argument is liable to ensue, in which each speaker imputes disorder to the last and recrimination takes the place of orderly debate. There is no impartial

Misbehaviour  
in the  
lobbies.

Authority  
of Speaker  
in matters  
of order.  
Lords.

<sup>1</sup> On the 16th June he was discharged, on the report of a committee, that arrangements had been made for his removal to a lunatic asylum, 107 C. J. 278. 292. 301.

<sup>2</sup> 145 C. J. 572.

<sup>3</sup> 132 C. J. 144, 233 H. D. 3 s. 951.

<sup>4</sup> 142 C. J. 377. 389, 317 H. D. 3 s.

1167. On a former occasion, an appeal to the Speaker, as a point of order, regarding an alleged threat uttered by a member to another member in a lobby, was met by the Speaker's stating that upon an occurrence in the lobby he declined to give an opinion, 263 H. D. 3 s. 50.

authority to whom an appeal can be made, and the debate upon a question of order generally ends with satisfaction to neither party, and without any decision upon the matter to which exception had been taken.

**Commons.** In so large and active an assembly as the House of Commons, it is absolutely necessary that the Speaker should be invested with authority to repress disorder and to give effect, promptly and decisively, to the rules and orders of the house. The ultimate authority upon all points is the house itself: but the Speaker is the executive officer by whom its rules are enforced. In ordinary cases the breach of order is obvious and is immediately checked by the Speaker; in other cases, if his attention is directed to a point of order at the proper moment, namely, the moment when the alleged violation of order occurred,<sup>1</sup> he at once gives his decision and calls upon the member in fault to conform to the rule as explained from the chair. Doubtful cases may arise, upon which the rules of the house are indistinct or obsolete, or do not apply directly to the point at issue; when the Speaker, being left without specific directions, refers the matter to the judgment of the house. On the 27th April, 1604, it was "agreed for a rule, that if any doubt arise upon the bill, the Speaker is to explain, but not to sway the house with argument or dispute;" and in all doubtful matters this course is adopted by the Speaker.<sup>2</sup>

Speaker  
always to  
be heard.

Whenever the Speaker rises to interpose in the course of a debate, he is to be heard in silence,<sup>3</sup> and the member who is speaking, or offering to speak, should immediately sit down, nor should members leave their seats while the Speaker addresses the house; <sup>4</sup> and members who do not maintain silence, or who attempt to address the Speaker, are called to order by the majority of the house with loud cries of "order" and "chair."

Members  
to with-  
draw  
when their  
conduct is  
under  
debate.

It is a rule in both houses, that when the conduct of a member is under consideration, he is to withdraw during the debate. The practice is to permit him to learn the charge against him, and, after being heard in his place, for him to withdraw from the house. The precise time at which he should withdraw is determined by the nature of the charge. When it is founded upon reports, petitions or other documents, or words spoken and taken down, which

<sup>1</sup> 210 H. D. 3 s. 534; 247 ib. 325. See also Denison, 42.

<sup>2</sup> 1 C. J. 187; Colchester, ii. 141.

<sup>3</sup> 1 C. J. 244.

<sup>4</sup> 49 Parl. Deb. 4 s. 122.

sufficiently explain the charge, it is usual to have them read, and for the member to withdraw before any question is proposed.<sup>1</sup> But if the charge be contained in the question itself, the member is heard in his place and withdraws after the question has been proposed; as in the cases of Mr. Secretary Canning, in 1808,<sup>2</sup> Lord Brudenell, in 1836,<sup>3</sup> and Mr. Chancellor of the Exchequer and Mr. Attorney General, in 1913.<sup>4</sup> If the member should neglect or refuse to withdraw at the proper time, the house would order him to withdraw. Thus, in the Lords, Lord Pierpoint, in 1641, and Lord Herbert of Cherbury, in 1642,<sup>5</sup> were commanded to withdraw; and in the Commons, in 1715, it was ordered, upon question and division, "that Sir W. Wyndham do now withdraw."<sup>6</sup> When a member's conduct has not been directly impugned by the form of the question, he has continued in the house and voted.<sup>7</sup> When Mr. John Bright, 18th June, 1883, had been heard in reply to a motion that words he had uttered amounted to a breach of privilege, the Speaker reminded him that he should withdraw. Mr. Bright, however, expressed a wish to remain in his place. The Speaker ascertained the general sense of the house, and Mr. Bright's withdrawal was not required.<sup>8</sup>

When a member against whose conduct a complaint was made had been heard and had withdrawn, on the expression of a desire that he might return to the house whilst a rejoinder was made to his explanation, the Speaker sanctioned his return to his place, until the consideration of his conduct was commenced by the house.<sup>9</sup> When doubt has arisen in debate in regard to a member's explanation of his conduct, he has been recalled and allowed to submit a further explanation to the house, after which he has again withdrawn.<sup>10</sup> Similarly on the Speaker's suggestion a member, who had been directed to withdraw during the consideration of a letter written by him reflecting on the Speaker's conduct, was recalled to afford him an opportunity of making an apology to the house after his letter had been resolved to be a breach of privilege.<sup>11</sup>

Recall of  
member  
during  
debate.

<sup>1</sup> See the cases of Lord Coningsby, in 1720, 21 L. J. 450; Sir Francis Burdett, in 1810, 65 C. J. 224; Sir Thomas Troubridge, in 1833, 88 ib. 470; Mr. O'Connell, in 1836, 91 ib. 42; Mr. Smith O'Brien, in 1846, 101 ib. 582; Mr. Isaac Butt, in 1858, 113 ib. 68; Mr. Lever, in 1861, 116 ib. 377. 381; see also Mr. Plimsoll's case, 1873, 128 ib. 61.

<sup>2</sup> 63 C. J. 149.

<sup>3</sup> 91 C. J. 319.

<sup>4</sup> 168 C. J. 183.

<sup>5</sup> 4 L. J. 476; 5 ib. 77.

<sup>6</sup> 18 C. J. 49.

<sup>7</sup> Mr. Stansfeld, 174 H. D. 3 s. 340.

<sup>8</sup> 138 C. J. 280, 280 H. D. 3 s. 812.

<sup>9</sup> 317 H. D. 3 s. 1633-1638.

<sup>10</sup> 148 C. J. 631.

<sup>11</sup> 148 C. J. 417.

Petitions  
complain-  
ing of  
members.

On the 17th May, 1849, petitions were presented complaining of the conduct of three members, as railway directors. The members were permitted to explain and defend their conduct, but did not afterwards withdraw. It being contrary to the standing orders (see p. 558) to make a motion or to enter upon a debate on the presentation of a petition, unless it complains of some present personal grievance or relates to a matter of privilege, the conduct of the members could scarcely be regarded as under the consideration of the house at that time, and as soon as the members were heard, the petitions were ordered to lie upon the table without further debate. One of the members withdrew, but returned almost immediately to his seat.<sup>1</sup>

Members  
in con-  
tempt.

On the 28th April, 1846, the house had resolved that Mr. William Smith O'Brien, a member, had been guilty of a contempt: but the debate upon the consequent motion for his commitment was adjourned until a future day; upon which Mr. O'Brien immediately entered the house and proceeded to his place. Mr. Speaker, however, acquainted him that it would be advisable for him to withdraw until after the debate concerning him had been concluded. The reason for this intimation was that the member had been already declared to be in contempt, although his punishment was not yet determined upon. On the 30th, a request was made, through a member, that he should be heard in his place: but this was regarded as clearly irregular, and he was not permitted to be heard.<sup>2</sup> A member not yet adjudged guilty of contempt may return to his place, when debate on his conduct has been adjourned.<sup>3</sup>

<sup>1</sup> 104 C. J. 302.

<sup>2</sup> 85 H. D. 3 s. 1198. 1291.

<sup>3</sup> 235 H. D. 3 s. 1815. 1833.

## CHAPTER XIII.

CLOSURE OF DEBATE, SELECTION OF AMENDMENTS AND ORDERS  
ALLOCATING TIME TO BILLS AND OTHER BUSINESS.

THE method of procedure known as closure, which brings debate to a conclusion and compels the house to decide upon the matter under discussion, was first authorized by the urgency rule of 3rd February, 1881 (see p. 304),<sup>1</sup> and was permanently established by a standing order agreed to in the year 1882.<sup>2</sup> By this standing order the house was enabled to vote forthwith upon a motion, "That the question be now put;" and the initiative in the proceeding was entrusted to the Speaker, or the chairman of ways and means, whilst the presence of more than two hundred members was required to make the vote effectual. These conditions in the application of the closure were subsequently modified in sessions 1887 and 1888. In session 1907 the power of closure was extended with certain modifications to standing committees (see p. 419).

Earlier  
method of  
closure.

Whilst the Speaker is in the chair,<sup>3</sup> or the chairman of ways and means or the deputy chairman is in the chair in committee of the whole house, if a member rising in his place, after a question has been proposed, moves, "That the question be now put," that question must be put forthwith without amendment or debate, unless it appears to the chair that the motion is an abuse of the rules of the

Present  
method.  
S. O. 26.  
27, Ap-  
pendix I.

<sup>1</sup> 136 C. J. 57.

<sup>2</sup> Attempts made by the house to close debate in former times are traceable on the journals: 9th May, 1604, resolution that Sir R. Litton should not speak any more; 31st March, 1610, resolution to stay further debate, 1 C. J. 205. 417. 968; 20th June, 1880, motion that Mr. O'Donnell be not now heard, 135 C. J. 206, 252 H. D. 3 s. 1902. 1907. 1917. The Speaker declined to put a similar motion, 2nd Feb. 1893, 8 Parl. Deb. 4 s. 266; 6th March, 1905, 142 ib. 433. A similar motion was refused in committee, 21st April, 1910, 16 H. C. Deb. 5 s. 2429. See

also Mr. Speaker Brand's closure, 2nd Feb. 1881, p. 255, n. 3.

<sup>3</sup> A motion for closure cannot be accepted by the chairman of ways and means or the deputy chairman when sitting as deputy-Speaker under standing order No. 1 (9), 50 H. C. Deb. 5 s. 571; 51 ib. 1385; but when the Speaker's unavoidable absence has been announced the chairman of ways and means or deputy chairman who takes the chair as deputy-Speaker under standing order No. 81 (1) has the same powers as regards closure as the Speaker.

house or an infringement of the rights of the minority. If, when a division is taken, it appears by the numbers declared from the chair, that not less than a hundred members voted in the majority in support of the motion, it is decided in the affirmative.<sup>1</sup>

Circumstances of closure motion.

Closure may be moved at the conclusion of a speech,<sup>2</sup> or whilst a member is addressing the house, and in the latter case intercepts any motion which it was his intention to move. The intervention of the chair regarding closure is restricted to occasions when the motion is made in abuse of the rules of the house, or infringes the rights of the minority. A closure motion may therefore be sanctioned by the chair, either immediately upon, or within a few minutes after, the proposal of a question to the house. In the discharge of this duty, the discretion of the chair is absolute and is not open to dispute.<sup>3</sup>

Further demands based upon the closure motion.

S. O. 26, (2), Appendix 1.

As without some further provision, the house might, even with the help of the closure, be unable to complete the matter then immediately in hand, directly after the motion, "That the question be now put," has been carried, and the question consequent thereon has been decided, the right is given to claim, subject to the discretion of the chair, and without having recourse to any further closure motion, that any further question be put which may be requisite to bring to a decision any question already proposed from the chair.<sup>4</sup> The utility of this power is specially proved by its application at the moment, when, pursuant to standing order, an interruption of business would otherwise immediately take place.<sup>5</sup>

<sup>1</sup> Motions failed, insufficient majority, 142 C. J. 506; 150 ib. 215; 160 ib. 149; 164 ib. 273; 166 ib. 216; 168 ib. 92; negatived, 143 ib. 232; 167 ib. 208; 168 ib. 53; 169 ib. 251. 386.

<sup>2</sup> 12 Parl. Deb. 4 s. 790.

<sup>3</sup> 313 H. D. 3 s. 177; 329 ib. 57; 337 ib. 1023; 354 ib. 431; 148 C. J. 123. For cases in which the chair has explained the acceptance or refusal of a motion for closure after a short debate, see 3 Parl. Deb. 4 s. 1640; 89 ib. 1390; 90 ib. 760; 107 ib. 383; 119 ib. 54; 132 ib. 108; 171 ib. 1010. 1045; 29 H. C. Deb. 5 s. 1268. A question to a minister as to the time at which the closure will be moved is irregular, 89 Parl. Deb. 4 s. 1060; 141 ib. 781.

<sup>4</sup> 3 Parl. Deb. 4 s. 138.

<sup>5</sup> On two occasions, since the introduction of closure, a form of motion, analogous to a closure motion, but not

within the provisions of the standing order, was, with the sanction of the Speaker, submitted to the house. The first, which met the case of an excessive number of amendments placed upon the notice paper on the report stage of a private bill, was as follows: "That inasmuch as this bill has been carefully considered by a select committee, this house declines to entertain amendments which ought to have been brought before that committee, and that the bill be ordered to be read a third time," 143 C. J. 330, 328 H. D. 3 s. 36. The second example was occasioned by an unprecedented multiplication of instructions to the committees upon certain bills. It assumed the form of an amendment to be moved upon the first instruction which stood upon the notice paper to the committee on Allotments Act Amendment Bill, in session 1890, to the effect "That this house



An analogous, but wholly distinct, power is also conferred by standing order No. 26, whereby, subject to the discretion of the chair, when a clause is under consideration, a motion may be made, which must be decided forthwith—"That the question, 'That certain words of the clause' (defined in the motion) 'stand part of the clause,' be now put," or "That the question, 'That a clause stand part of (or be added to) the bill,' be now put." These motions, if the questions put thereon are carried, override all power of amendment to the words included in their scope: thus, for instance, in committee upon a bill, after certain additions proposed to subsection 3 of the fifth clause had been negatived, a member rose and moved, "That the question, 'That the word *where*' (being the initial word of subsection 4) 'stand part of the clause,' be now put." The closure motion, and the question consequent thereon, were carried, and thereby all further additions to subsection 3 were excluded.<sup>1</sup>

The closure motions that certain words should stand part of a clause, or that a clause should stand part of a bill, apply to a schedule as to a clause,<sup>2</sup> and are in form and use equally applicable when the house is in committee, and when the Speaker is in the chair.<sup>3</sup> These motions also can be moved although closure has not been previously enforced during the consideration of the clause; nor is it necessary that closure should have been moved on the question last proposed from the chair. Thus on consideration of a bill as amended, no antecedent closure having been moved, a member rose and moved, "That the question, 'That certain specified words of a clause stand part of the bill,' be now put," and the question on the closure motion was put from the chair.<sup>4</sup> In committee on a bill, the motion, "That the question, 'That the clause stand part of the bill,' be now put," can be made, although no antecedent closure had been moved during the consideration of the clause.<sup>5</sup>

declines by any instruction to extend the scope of the bill in question." The amendment was not moved, upon the understanding that it was reserved for use, in case more than one instruction to the bill was moved, 344 H. D. 3 s. 18; see Addresses from Chair regarding Instructions, Appendix II.

<sup>1</sup> 146 C. J. 264. 344; 147 ib. 317; 148 ib. 160.

<sup>2</sup> 148 C. J. 161; 151 ib. 122; 160 ib. 402, 151 Parl. Deb. 4 s. 538.

<sup>3</sup> On consideration of a bill, as amended,

closure has been moved extending to words beyond those of the clause to which the last amendment applied, 161 C. J. 458. If, after closure, the question "That a clause stand part of the bill" be agreed to, on consideration of a bill as amended, amendments by way of additions to the clause may be moved, 161 C. J. 291. 436.

<sup>4</sup> 338 H. D. 3 s. 639. 644; 144 C. J. 343; 146 ib. 344.

<sup>5</sup> 156 C. J. 340, 97 Parl. Deb. 4 s. 1526.

Closure upon the words of a clause. S. O. 26 (2) Appendix 1.

Application of closure motions to schedules and to consideration of a bill on report.

Closure at  
moment  
of inter-  
ruption.

Under paragraph 4 of standing order No. 1, closure may be moved at the moment for the interruption of business. Under ordinary circumstances, on the appointed hour being reached, the Speaker or chairman says, "Order, order," and proceeds to interrupt the business. The Speaker announces that the debate stands adjourned, or the chairman proceeds to leave the chair to make his report to the house. These proceedings on the part of the Speaker or the chairman create the moment of the interruption of business, when closure may be moved. The moment for the interruption of business is, however, as has been mentioned on p. 201, projected forward beyond the hour fixed by the standing orders, if the house at that hour is engaged in a division. The Speaker, or the chairman if the house is in committee, after the question upon which the division is being taken has been decided, continues the proposal of such further questions as are necessary to complete the proceeding, until a member rises to speak, or says, "I object to further proceedings." It is then that the moment for the interruption of business arrives and that the closure motion may be moved.<sup>1</sup> For instance, in the committee of supply the proceedings on a division to decide the question for the reduction of a grant were not completed until after the time fixed for the interruption of business, whereupon the chairman proposed the original question, namely, the grant itself. As a member offered to speak thereto, the chairman proceeded to interrupt the business, when closure was moved, and carried: the original question was put accordingly; and the chairman left the chair to report the resolution to the house.<sup>2</sup> On consideration of a bill on report the division on an amendment proposed to clause 1 was not concluded until after the time fixed for the interruption of business. At the conclusion of the division the Speaker proceeded to interrupt the business when a member moved, "That the question, 'That clause 1 stand part of the bill,' be now put." The closure motion and the question consequent thereon were carried, after which further proceeding on consideration of the bill as amended stood adjourned.<sup>3</sup>

<sup>1</sup> 143 C. J. 268; 163 ib. 477, 197 Parl. Deb. 4 s. 1843.

<sup>2</sup> 143 C. J. 242, 246, 470, 326 H. D. 3 s. 872, 999, 330 ib. 1217; 144 C. J. 408, 339 H. D. 3 s. 711, 800; 156 C. J. 161, 93 Parl. Deb. 4 s. 713; 162 C. J. 289, 177 Parl. Deb. 4 s. 266. When in similar circumstances the motion for closure was negatived, the chairman again proposed

the original question and on objection being taken to further proceeding left the chair to make his report to the house, 169 C. J. 251.

<sup>3</sup> 151 C. J. 304, 42 Parl. Deb. 4 s. 47; 167 C. J. 224. For similar procedure in committee on a bill, see 167 C. J. 342, 110 Parl. Deb. 4 s. 1181.

As has been explained on p. 314, after a closure motion has been moved and acted upon, any member may claim that such further questions be put forthwith as are requisite to bring to a decision the question already proposed from the chair, no second closure motion being necessary.<sup>1</sup> In that case, unless the assent of the chair be withheld, such further questions are successively put forthwith, regardless of the fact that the hour for the interruption of business is over-past. For example, when a resolution reported from a committee was under the consideration of the house, and an amendment thereto had been negatived upon a closure motion, the question, "That this house doth agree with the committee in the said resolution," was claimed and put accordingly.<sup>2</sup> When a closure motion had been carried which disposed of an amendment to an amendment, first the question on the amendment itself, and then on the main question, were forthwith claimed and decided by the house.<sup>3</sup> When the house had negatived the question for the Speaker's leaving the chair for the committee of supply, upon the consequent question that the words proposed by way of amendment to the main question be there added, closure was moved and acted upon; the words were added, and then the main question, so amended, was claimed and put from the chair.<sup>4</sup>

In session 1909, by an amendment of the standing order, "Closure of Debate," a restriction was placed upon the power of members to move amendments. It was then provided that a motion could be made under the same conditions as a motion for closure (see p. 313); that with respect to certain words in a motion, clause or schedule under debate defined in the motion, the chair be empowered to select the amendments to be proposed.<sup>5</sup> If the motion is carried, not less than a hundred members voting in the majority, the chair is then and thereafter to exercise the power of selecting the amendments to be proposed to the words so defined. When the motion has been carried, the chair either selects the amendments to be moved<sup>6</sup> and announces

Closure  
claimed  
on further  
questions.

Selection  
of amend-  
ments.  
S. O. 26  
(3), Ap-  
pendix I.

<sup>1</sup> 143 C. J. 504, 331 H. D. 3 s. 1703; 144 C. J. 53, 333 H. D. 3 s. 1101; 147 C. J. 249; 159 ib. 51, 130 Parl. Deb. 4 s. 869.

<sup>2</sup> 145 C. J. 512; 156 ib. 369, 98 Parl. Deb. 4 s. 1212; 160 C. J. 353; 165 ib. 267; 168 ib. 59.

<sup>3</sup> 147 C. J. 166. 196.

<sup>4</sup> 147 C. J. 249.

<sup>5</sup> 164 C. J. 338. For cases in which, before this addition to the standing order was made, assent to a motion for closure

upon the words of a clause was provisionally withheld with a view to the discussion of a particular amendment, see 315 H. D. 3 s. 1313; 41 Parl. Deb. 4 s. 129; 42 ib. 39; 74 ib. 519; 158 ib. 1511; 6 H. C. Deb. 5 s. 1663. The power given by the standing order was first used 9th August, 1909, 164 C. J. 365.

<sup>6</sup> 9 H. C. Deb. 5 s. 113. See also 42 ib. 1260. 1456; 44 ib. 2525.

the selection, or without preliminary announcement calls on members one by one to move the amendments selected by him.<sup>1</sup> The power to select amendments to the words defined in the motion includes the power to select amendments proposed to be moved to an amendment selected by the chair.<sup>2</sup> The chair may ask any member who has given notice of an amendment to give such explanation of his amendment as may be necessary to form a judgment upon it.<sup>3</sup>

Allocation  
of time to  
bills and  
other  
business.

The temporary provision made by the urgency resolutions of sessions 1881 and 1882 for the consideration of important bills has been mentioned on p. 304, and some description must now be given of the arrangements that have been made in subsequent sessions to ensure the completion of various stages of bills<sup>4</sup> and other business.<sup>5</sup>

Stages  
dealt with  
in orders.

Orders of the house have prescribed the times at which and the proceedings by which the remaining part or the whole of the committee stage, the report stage, the committee and report stages, the report stage and third reading, and the committee and report stages and third reading of a bill should be disposed of.<sup>6</sup> Provision has also been made in some cases for the stages of a financial resolution in connection with the bill,<sup>7</sup> and in the case of a bill which, having been

<sup>1</sup> 9 H. C. Deb. 5 s. 373. 375. 609.

<sup>2</sup> 9 H. C. Deb. 5 s. 808.

<sup>3</sup> Ib. 807.

<sup>4</sup> Criminal Law Amendment (Ireland) Bill, 142 C. J. 285. 332; Members of Parliament (Charges and Allegations) Bill, 143 ib. 420; Government of Ireland Bill, 148 ib. 400. 513; Evicted Tenants (Ireland) Arbitration Bill, 149 ib. 334; Education (England and Wales) Bill, 157 ib. 473; Licensing Bill, 159 ib. 291; Aliens Bill, 160 ib. 294; Education (England and Wales) Bill, 161 ib. 255; Plural Voting Bill, ib. 464; Territorial and Reserve Forces Bill, 162 ib. 166; Evicted Tenants (Ireland) Bill, ib. 347; Small Landholders (Scotland) Bill, ib. 392; Small Holdings and Allotments Bill, ib. 408; Small Landholders (Scotland) Bill and Land Values (Scotland) Bill, 163 ib. 42; Old Age Pensions Bill, ib. 258; Licensing Bill, ib. 338. 439; Elementary Education (England and Wales) (No. 2) Bill, ib. 464; Housing, Town Planning, &c., Bill, 164 ib. 227; Irish Land Bill, ib. 229; Finance (1909-10) Bill, 165 ib. 103; Finance (No. 2) Bill, ib. 304; Revenue Bill, 166 ib. 106; Parliament Bill, ib. 200; National Insurance Bill, ib. 439., 505; Government of Ireland

Bill, 167 ib. 366. 469; Established Church (Wales) Bill, ib. 433. 517; Franchise and Registration Bill, ib. 506; Government of Ireland Bill, Established Church (Wales) Bill, and Temperance (Scotland) Bill, 168 ib. 192; Government of Ireland Bill, Established Church (Wales) Bill, and Plural Voting Bill, 169 ib. 204; Finance Bill, ib. 330.

<sup>5</sup> Business of Supply to be concluded before end of financial year, 160 C. J. 70; 168 ib. 22; Business of the House (Procedure), 162 ib. 114; Relations of the two Houses and Duration of Parliament, 165 ib. 74; a supplementary estimate and consequential ways and means resolution, and Consolidated Fund (Appropriation) Bill, 165 ib. 305. The order with regard to Relations of the two Houses and Duration of Parliament included the introduction without question put of a bill founded on any resolutions agreed to.

<sup>6</sup> For orders prescribing proceedings on two bills, see 163 C. J. 42; on three bills, 168 ib. 192; 169 ib. 204.

<sup>7</sup> If the committee on the financial resolution is deemed to have been set up, the King's recommendation is signified to the motion for allocating time, 163 C. J. 39; 165 ib. 102.

rejected by the House of Lords, has been re-introduced in the House of Commons in the following session, all the stages of the bill have been comprised in the order of the house dealing with its progress, as well as the stages of any financial resolution.

An order of this kind allots certain days or parts of days or a certain number of days <sup>1</sup> to the various stages of the bill or bills with which it deals, while the days allotted to the committee and report stages are divided among various portions of the bill.<sup>2</sup> Provision is made that, in the event of any stage or portion of the bill not being concluded when the time appointed for its conclusion is reached, such questions as may be necessary to dispose of that stage or portion shall be put forthwith from the chair as soon as the question which is under discussion at the appointed time and which is then to be put forthwith shall have been disposed of. After the appointed hour, until the stage or portion then to be disposed of has been concluded, only those amendments, new clauses or new schedules of which notice has been given by the government may be proposed. With a view to reducing the number of divisions to be taken the question on such amendments is directed to be put in the form "that the amendment be made," while in the case of new clauses or new schedules, the only question put is "that such clause (or schedule) be added to the bill." On days on which proceedings under the order are to be brought to a conclusion, or in some cases on any allotted day, dilatory motions on the bill, or motions to re-commit the bill,<sup>3</sup> to postpone a clause, or that the chairman do report progress or leave the chair, are forbidden unless moved by the government, when the question thereon is to be put without amendment or debate.

Provision is usually made that opposed private business set down

Opposed  
private  
business

<sup>1</sup> When certain days are allotted, power is given to substitute another day for an allotted day by a motion which is to be made by a minister at the commencement of public business and is not open to amendment or debate, 165 C. J. 73. 103. When a number of days are allotted, the conditions which make any day an allotted day are defined in the order, 159 C. J. 291.

<sup>2</sup> On some occasions a number of days has been allotted to the report stage but the distribution of the various parts of the bill among them has been left to be determined subsequently by the house by means of a motion. The manner in which

the motion should be made and the limit of time allowed for it have been determined by the order of the house, 163 C. J. 338; 167 ib. 366. 433. The business to be taken on certain of the days allotted to the report stage of a bill has also been changed by an order of the house, 166 C. J. 505.

<sup>3</sup> A motion to re-commit a bill is not a dilatory motion and may be made unless it is specifically forbidden, 161 C. J. 362. Such a motion was made on the 29th March, 1911, as that day was not one on which proceedings were to be concluded, 166 C. J. 114, 23 H. C. Deb. 5 s. 1339.

and motions for adjournment for allotted days.

by direction of the chairman of ways and means for a quarter-past eight on a day on which proceedings under one of these orders are to be brought to a conclusion shall be taken at the conclusion of such proceedings instead of at a quarter-past eight and be exempted from interruption,<sup>1</sup> while private business has also been forbidden to be set down on such a day.<sup>2</sup> Motions for the adjournment of the house for the discussion of definite matters of urgent public importance have usually been prohibited on allotted days,<sup>3</sup> but motions for which leave has been obtained at the end of questions have been directed to be taken at the conclusion of proceedings under the order instead of at a quarter-past eight,<sup>4</sup> and on one occasion such a motion was exempted from interruption under the standing orders relating to the sittings of the house.<sup>5</sup>

Instructions to committees on bills.

Instructions to the committees on the bills have been forbidden,<sup>6</sup> or the Speaker has been directed to put the question thereon after a brief speech from the member who moved the instruction and from the minister in charge of the bill,<sup>7</sup> or proceedings on instructions have been included in one of the days allotted to the committee stage of the bill.<sup>8</sup>

Exemption of proceedings from standing order No. 71.

Proceedings under these orders have been given effect notwithstanding the provisions of standing order No. 71, and the practice of the house relating to the interval between the stages of a bill imposing taxation or originating in a committee of the whole house to which the King's recommendation has been signified.<sup>9</sup>

Provision as to Saturday sitting.

Power has been taken by one of these orders to obtain a sitting of the house on a Saturday at a specified hour or to change the hour of meeting on a Friday,<sup>10</sup> for the purposes of the bill dealt with in the order, while notices of questions for oral answer on a Friday or Saturday, which was an allotted day under the order, were ordered to be treated as notices for the following Monday.<sup>11</sup>

Exemption of proceedings from interruption, &c.

Proceedings under such an order are exempted by the order from interruption under any standing order regulating the sittings of the house, while provision is also made that nothing in the order shall prevent any proceedings which under the order are to be concluded

<sup>1</sup> 161 C. J. 255; 162 ib. 392. 408; 163 ib. 338. 464; 164 ib. 227. 229; 165 ib. 73. 103. 304; 166 ib. 106. 200. 439; 167 ib. 366. 433; 168 ib. 22.

<sup>2</sup> 162 C. J. 166.

<sup>3</sup> 157 C. J. 473; 165 ib. 103.

<sup>4</sup> 167 C. J. 366; 168 ib. 22.

<sup>5</sup> 168 C. J. 22.

<sup>6</sup> 165 C. J. 304.

<sup>7</sup> 164 C. J. 227. 229.

<sup>8</sup> 167 C. J. 433.

<sup>9</sup> 165 C. J. 103. 304; 166 ib. 106.

<sup>10</sup> 163 C. J. 464; 167 ib. 508.

<sup>11</sup> 163 C. J. 46.

on any particular day being concluded on any other day, or necessitate any particular day or part of a particular day being given to any such proceedings if those proceedings have been otherwise disposed of; or prevent any other business being proceeded with on any particular day, or part of a particular day, in accordance with the standing orders of the house, after any proceedings to be concluded under the order on that particular day, or part of a particular day, have been disposed of. Proceedings under an order have been given precedence by the order over the business of supply on any Thursday upon which they might be set down, while the precedence of the business of unofficial members at a quarter-past eight upon a Wednesday, when proceedings under the order were set down, has been preserved.<sup>1</sup>

The chair has been given power to select the amendments to be proposed on any allotted day, and standing order No. 26 has been ordered to apply as if a motion had been carried under paragraph 3 of that standing order empowering the chair to select the amendments with respect to each motion, clause, or schedule under debate on that day,<sup>2</sup> and has also been directed to give precedence to specified amendments in a prescribed order.<sup>3</sup>

In some cases provision has been made to enable the government to move to leave out a part of the bill or any clause or schedule or consecutive clauses or schedules <sup>4</sup> of the bill before consideration of any amendments thereto in committee, and the question on any such motion has been ordered to be put forthwith by the chairman or, if the motion be made in the house, by the Speaker, without amendment or debate,<sup>5</sup> or after a brief explanatory statement from the minister in charge and from any one member who rises to criticize the statement.<sup>6</sup> When a part of a bill was committed under one of these orders to a standing committee, this power was extended to the standing committee during its consideration of this part of the bill.

By one of these orders in the case of a bill which had been read a second time and committed to a committee of the whole house, the house ordered that one part of the bill (including the schedules therein referred to, and any new clauses dealing with the subject-matter of that part of the bill) should stand committed to a standing committee,

Selection  
of amend-  
ments on  
allotted  
business.

Motion to  
leave out  
clauses,  
&c., before  
discussion  
thereon.

Commit-  
tal of part  
of a bill to  
a standing  
commit-  
tee.

<sup>1</sup> 165 C. J. 73.

<sup>2</sup> 167 C. J. 366. 433. 506.

<sup>3</sup> 167 C. J. 506.

<sup>4</sup> 161 C. J. 255; 163 ib. 338. 464; 164 ib. 229; 165 ib. 304; 166 ib. 439; 167 ib.

366.

<sup>5</sup> 161 C. J. 255; 163 ib. 338. 464; 164 ib. 229; 165 ib. 304.

<sup>6</sup> 166 C. J. 439; 167 ib. 366.

as if the bill on being read a second time had as respects those provisions been so committed. The remaining provisions of the bill continued committed to a committee of the whole house, and the house ordered that when the provisions committed to the committee of the whole house and the provisions committed to the standing committee should have been reported to the house, the report stage of the bill should be proceeded with as if the bill had been reported as a whole to the house. While this part of this bill was before it the standing committee was given power, without any resolution of the committee, to sit whilst the house was sitting and, if the committee so determined, to sit on any day after 4 p.m. without an order of the house, and paragraph 3 of standing order No. 26, relating to the power of the chair to select amendments, was ordered to apply to its proceedings.<sup>1</sup>

Orders  
relating to  
bills identical with  
bills of  
previous  
session.

In the case of bills which have been re-introduced into the House of Commons in the session subsequent to that in which they did not pass the House of Lords with only such alterations as are contemplated by section 2 (4) of the Parliament Act, 1911 (see p. 398), the chairman has been ordered on the committee stage of a bill to put forthwith the question that he do report the bill, without amendment, to the house without putting any other question. The question so put has been ordered to be decided without amendment or debate.<sup>2</sup> In some cases the Speaker has been directed, when the order of the day is read for the house to resolve itself into committee on the bills, to leave the chair without putting any question, notwithstanding that notice of an instruction has been given.<sup>3</sup> The chairman has been directed at the close of a specified period to bring to a conclusion the committee stage of any financial resolution relating to the bill, and on the report stage of the financial resolution the Speaker has been directed to put forthwith the question that the house doth agree with the committee in the resolution without putting any other question, the question so put being decided without amendment or debate.<sup>4</sup>

Order  
relating to  
Finance  
(1909-10)  
Bill.

In the case of the Finance (1909-10) Bill of session 1910, which was introduced to take the place of the Finance Bill rejected by the House of Lords in the previous session (see p. 518), the order of the house prescribing the proceedings for passing it dealt with all the stages of the bill and the committee and report stages of the ways

<sup>1</sup> 166 C. J. 439.

<sup>2</sup> 168 C. J. 192; 169 ib. 204.

<sup>3</sup> 169 C. J. 204.

<sup>4</sup> 168 C. J. 192; 169 ib. 204.



and means resolutions and of any other financial resolutions.<sup>1</sup> The subjects of the resolutions of the previous session were set out in appendices to the order, and it was ordered that if the resolutions to be proposed in committee of ways and means corresponded with those on which the Finance Bill of the previous session was brought in and amended, so far as effect was given to those resolutions by the bill as passed by the House of Commons, the committee stage of those resolutions should be proceeded with, as if the resolutions constituted certain specified groups, each of which was to be treated as a single resolution, while the report stage was to be proceeded with, as if all the ways and means resolutions constituted a single resolution. A similar provision was made for the financial resolutions, these being treated, if corresponding with those of the previous session, as a single resolution. The resolutions reported from the committee of ways and means and the committee on financial resolutions were ordered to be successively considered forthwith, and a bill was to be ordered to be brought in upon them without question put. It was provided that on the committee stage of the bill no amendments should be in order except amendments which, in the opinion of the chairman, were properly moved as amendments to any words or matter which represented additions to the Finance Bill of the previous session, as passed by the House of Commons, or substitutions for words or matter in that bill, or which were moved for the purpose of reinserting words or matter contained in that bill, but not contained in the bill before the house, or amendments necessarily consequential thereon, and no question was to be put by the chairman except a question that an amendment, which was in order, should be made, and all parts of the bill were to be deemed to stand part of the bill (subject to any such amendment) without question put. This order was given effect notwithstanding anything in standing order 71, and notwithstanding the practice of the house relating to the interval between the committee and report stage of any resolution or bill.

<sup>1</sup> 165 C. J. 103. On the motion being made, the king's recommendation was signified to the subject-matter of the reso-

lutions to be proposed in the committee on financial resolutions, 165 C. J. 102.

## CHAPTER XIV.

## DIVISIONS.

**Division.** A **DIVISION** is the process adopted by both houses to decide a question when the declaration by the chair of the result of the collection of the voices (see p. 255) is challenged.

**Earlier practice in the Commons.** Whilst the Commons sat in St. Stephen's Chapel, the separation of the "ayes" and "noes" for the purpose of a division was effected by the retention of one party within the house, to be counted there, and by the withdrawal into the lobby of the other party, who were counted on their return into the house. This practice continued until 1836, when a change of method being thought advisable, the arrangement was adopted of two lobbies, one at each side of the house, whereby, on a division, the house was entirely cleared, one party being sent into each of the lobbies.

**Divisions in the Lords.** In the House of Lords the mode of taking divisions is regulated by standing order No. 32. Until 1857, a division was effected in the Lords by the not contents remaining within the bar, and the contents going below the bar: but in that year their lordships adopted nearly the same arrangements as those which had been in successful operation in the Commons since the year 1836. The proceedings as at present conducted in the House of Lords, which are substantially the same as those of the House of Commons between 1836 and 1906, will now be described.

When, on a question being put, a division is called for, the Lord Speaker, or in a committee of the whole house, the Lord Chairman, directs strangers to withdraw (see p. 328) by saying "Clear the Bar." As soon as this order has been given, the Clerk at the Table turns a two-minute sandglass and two tellers are appointed for each party, without respect to their degree.<sup>1</sup> The doors are locked at the expiration of two minutes, as indicated by the sandglass, or after such shorter time as the tellers for both sides may agree to, and the question is again put. The contents then go into the right lobby, and the not

<sup>1</sup> Until 1857, the two tellers were required to be of the same degree.

contents into the left lobby, where they are counted by the tellers, and their names recorded by the clerks.<sup>1</sup> The vote of the lord on the woolsack, or in the chair, is taken first in the house; and any lord may, on the ground of infirmity, by permission of the house, be told in his seat. The tellers having counted the peers voting in the lobbies, return to the house and announce the numbers<sup>2</sup> to the lord on the woolsack or in the chair, who reads them to the house, adding "and so the Contents (or Not Contents) have it." Any lords who desire to avoid voting may go within the rails round the throne, where they are not strictly within the house, and are not therefore counted in the division.

Alphabetical lists of the names are printed with the Lords' Minutes; and similar lists, but arranged according to the rank of the peers on the roll, are also inserted in the journals.<sup>3</sup>

If a peer goes into the wrong lobby, he may, pursuant to standing order No. 32, correct the error. Being accompanied by the tellers to the table, he there declares the vote that he intended to give, which is recorded by them accordingly.<sup>4</sup>

In case of an equality of voices the not contents have it, and the question is declared to have been resolved in the negative. When this occurs, it is always entered in the journal that, "according to the ancient rule in the law,"<sup>5</sup> or "the ancient rule in the like case,"<sup>6</sup> *'Semper præsumitur pro negante,'*<sup>7</sup> &c. In view of this rule when the house is sitting judicially, the question is put "for reversing, and not for affirming;" and consequently, if the numbers be equal, the house refuses to reverse the judgment and an order is made that the judgment of the court below be affirmed.<sup>8</sup>

As a general rule none but "law lords," i.e. peers who have held high judicial offices, and lords of appeal in ordinary, vote in judicial cases or otherwise interfere with the decisions of the house in regard thereto. All peers, however, are entitled to vote, if they think fit,

<sup>1</sup> On the second reading of Queen Caroline's Degradation Bill, in 1820, Lord Gage enforced an old order, and each peer gave his vote, in his place, *seriatim*, 53 L. J. 751. 754; Plumer Ward, ii. 91. Until 1913 the tellers took their places inside the house and counted the peers voting as they re-entered the house from the lobbies, 14 H. L. Deb. 5 s. 1078.

<sup>2</sup> Contrary to the practice of the House of Commons the tellers are included in the number of peers voting.

<sup>3</sup> 88 L. J. 535. 548.

<sup>4</sup> 166 H. D. 3 s. 1608; 94 L. J. 230; 116 ib. 254.

<sup>5</sup> 33 L. J. 519.

<sup>6</sup> 14 L. J. 167. 168.

<sup>7</sup> For early precedents of this rule and the manner of proposing questions so that there shall be no change except by a majority of voices, see Parl. Pap. (H. L.) sess. 1907, No. 95, p. 11.

<sup>8</sup> 115 L. J. 461; 123 ib. 278.

and the right has been exercised in some very remarkable cases. In 1685, in the case of *Howard v. the Duke of Norfolk*, a decree of the Lord Keeper Guildford was reversed after an angry debate by a house attended by eighteen bishops and sixty-seven temporal peers.<sup>1</sup> In 1689, on Titus Oates' writ of error, the judgment of the court below was affirmed, on a division, by thirty-five peers against twenty-three, in opposition to the unanimous opinion of the nine judges who attended.<sup>2</sup> In June, 1806, in the case of Lord Hertford's guardianship of Lord Hugh Seymour's daughter, there was a large attendance of lay peers.<sup>3</sup> In the writ of error of *The Queen v. O'Connell*, in 1844, a discussion arose, in which some of the lay lords seemed inclined to exercise their right but abstained from voting.<sup>4</sup> On the 9th April, 1883, in the appeal of *Bradlaugh v. Clarke*, Lord Denman, a lay peer, was present and expressed his opinion in support of the dissentient lord of appeal, Lord Blackburn.

Divisions  
in the  
Commons.

The present method of taking divisions in the House of Commons was introduced experimentally in session 1906, after the Whitsuntide adjournment,<sup>5</sup> and the amendments in the standing orders necessitated by the change were made at the end of that session.<sup>6</sup> On a division being called the Speaker or the chairman, as the case may be, gives the order "clear the lobby," and the tellers' doors in both lobbies are locked. After the lapse of two minutes from this direction the Speaker or chairman again puts the question, and the ayes and noes respectively declare themselves. If his opinion is again challenged, the Speaker or chairman directs the ayes to go into the right lobby, and the noes into the left lobby, and then appoints two tellers for each party; <sup>7</sup> of whom one for the ayes and another for the noes are

<sup>1</sup> 14 L. J. 50, 3 Cas. in Ch. 14, Campbell, Lives, iii. 485, 486.

<sup>2</sup> 14 L. J. 228, Macaulay, Hist. iii. 388: see also Sugden 14 *et seq.* for similar instances in cases of *Reeve v. Long*, 15 L. J. 446; *Bertie v. Falkland*, 16 L. J. 230, 236, 240, 247; *Ashby v. White*, 17 ib. 369; *Douglas peerage case*, 32 ib. 264; 16 Parl. Hist. 518; 1 Cav. Deb. 618; *Smith v. Lord Pomfret*, 33 L. J. 303; 4 Walpole, Mem. of Geo. III. 285; *Hill v. St. John*, 34 L. J. 443; *Bishop of London v. Fytche*, 36 L. J. 687; 2 Bro. Parl. Cas. 211; Campbell, Lives, v. 523.

<sup>3</sup> Lord Minto says, 16th June, 1806, "The House of Lords made a very discreditable appearance on this occasion, attending in great numbers, at the solici-

tation or command of the Prince of Wales."—Life and Letters of Sir Gilbert Elliot, first Earl of Minto, iii. 390.

<sup>4</sup> 11 Cl. & Fin. 155, 421.

<sup>5</sup> 158 Parl. Deb. 4 s. 445.

<sup>6</sup> 161 C. J. 494, 167 Parl. Deb. 4 s. 472.

<sup>7</sup> A member is bound to act as teller for that party with whom he has declared himself, when appointed by the Speaker; and his refusal would be reported to the house, Private Mem. 7th July, 1859; though a member, by seconding a motion, does not pledge himself to act as teller, 287 H. D. 3 s. 1220. A member cannot act as a teller on a question for his own suspension, 268 ib. 1017; 271 ib. 1129; 98 Parl. Deb. 4 s. 505.

associated, to check each other in the telling. If two tellers cannot be found for one of the parties, the division cannot take place; and the Speaker forthwith announces the decision of the house. For instance, if it appears that there are no tellers, or but one teller for the ayes, the Speaker declares "that the noes have it."<sup>1</sup> When there are two tellers for each party, they proceed at once to their doors leading from the lobbies, which are then unlocked and the counting begins.<sup>2</sup> Clerks are stationed in each division lobby, at desks, on which are placed lists of the members, in alphabetical order; and, as the members pass by, the clerks place a mark against their names; and, at the entrance from the lobby into the house, the tellers count the numbers. Members disabled by infirmity are told in the house. At the expiration of six minutes from the time at which the lobby was ordered to be cleared, the Speaker or chairman directs the doors leading from the house into the division lobbies to be locked and they remain locked until the announcement of the numbers from the chair.

When both parties have returned into the house, the tellers state the numbers in the division to a clerk at the table, to be entered upon the division paper; they then come up to the table (the tellers for the majority being on the right); and one of the tellers for the majority reports the numbers.<sup>3</sup> The division paper is handed to the Speaker or chairman, who declares the numbers, and states the determination of the house.

If two tellers differ as to the numbers on the side told by them, or if a mistake regarding the numbers be discovered, unless the tellers agree thereon, a second division must take place,<sup>4</sup> when the numbers

Declara-  
tion of  
numbers.

Errors in  
a division.

<sup>1</sup> 97 C. J. 183. 354; 98 ib. 605; 105 ib. 364; 127 ib. 121. 347; 132 ib. 61; 144 ib. 256; 150 ib. 154; 151 ib. 130, 39 Parl. Deb. 4 s. 463; 156 C. J. 62. 176; 160 ib. 303; 170 ib. 119.

<sup>2</sup> When on one occasion the door of a division lobby was unlocked without the tellers being present and members entered the house untold, the chairman directed the doors to be reopened and a fresh division took place, 29th March, 1800, 155 C. J. 125.

<sup>3</sup> The report of three tellers has been accepted on occasions when one teller was absent, 36 Parl. Deb. 4 s. 877. 1059; 47 H. C. Deb. 5 s. 91; but it is the duty of the tellers to remain in the house until the numbers have been declared, 36 Parl. Deb.

4 s. 1060; 47 H. C. Deb. 5 s. 245.

<sup>4</sup> The tumult in committee, 10th May, 1675 (see p. 411), arose from a difference among the tellers. On the 27th February, 1771, a stranger having been told among the "noes," a second division took place, 2 Cav. Deb. 332. 335. Second divisions were taken on the 30th March, 1810, on the Expedition to the Scheldt, 65 C. J. 235; on the 26th June, 1860, in committee on the Tenure and Improvement of Land (Ireland) Bill, 115 ib. 332; and on the 13th April, 1872, in committee on the Parliamentary and Municipal Elections Bill, 127 ib. 140. On the 26th June, 1860, a question was raised privately, whether a member, who had voted with the ayes in the first division,

will be correctly reported by the Speaker. If a mistake is subsequently discovered, it will be ordered to be corrected in the journal.<sup>1</sup> When an error in the numbers reported by the tellers in a committee of the whole house has been discovered before the chairman has left the chair, the chairman has ordered the numbers to be corrected accordingly.<sup>2</sup> An error in the report of the numbers taken at a division is brought before the house by both the tellers of the lobby wherein the error arose; though a statement made by one of the tellers has been accepted.

Addition  
of mem-  
bers un-  
counted  
by tellers.

Members occasionally remain in a division lobby uncounted by the tellers, and their votes are by mutual agreement included in the tellers' statement to the clerk at the table. If the tellers are not made aware that a member has remained uncounted in a division lobby, he can obtain the addition of his vote to the numbers in the division, according to the lobby through which he has passed, if, making an appeal to the chair, he can establish his right to vote and raises the claim before the declaration of the numbers from the chair<sup>3</sup> (see p. 344).

With-  
drawal of  
strangers.

It was formerly customary, before a division took place in either house, to enforce the entire exclusion of strangers.<sup>4</sup> In the House of Lords, under resolution 10th March, 1857, and standing order No. 32, strangers have not been required to withdraw from the galleries and the space within the rails of the throne. In fact, they withdraw only from those parts of the house in which, if they remained, they would interfere with the division. In the House of Commons, pursuant

could afterwards vote with the noes: but it was held that, as the first division had become null and void, the house could only deal with the member's voice and vote in the last and valid division.

<sup>1</sup> 102 C. J. 131; 115 ib. 216; 118 ib. 111; 137 ib. 98; 141 ib. 57. 103; 142 ib. 506; 148 ib. 496; 151 ib. 187; 152 ib. 221; 154 ib. 146. 349; 156 ib. 240; 163 ib. 49. Where an error in the numbers has been discovered before the end of a sitting, the tellers being agreed thereon have come to the table and stated the corrected numbers and the Speaker has reported the numbers accordingly, 103 C. J. 102.

<sup>2</sup> 123 C. J. 16; 128 ib. 223.

<sup>3</sup> 245 H. D. 3 s. 919; 140 C. J. 93; 67 Parl. Deb. 4 s. 1200; 45 H. C. Deb. 5 s. 939. When members have com-

plained immediately after the declaration of the numbers in a division from the chair that the tellers had left the door of a lobby before they had reached it, the chairman has directed the tellers of that lobby to come to the table, and having heard their explanation directed the clerk to alter the numbers by adding the names of the members to the ayes, and then again declared the numbers as so corrected, 33 Parl. Deb. 4 s. 658; 44 H. C. Deb. 5 s. 1151. Both the tellers in the lobby through which the member has passed must agree that he should be counted, 98 Parl. Deb. 4 s. 1189.

<sup>4</sup> In the Irish Parliament, strangers were permitted to be present during a division; see 1 Sir J. Barrington, Personal Sketches, 195.

to the resolution of the 28th July, 1853, and the standing order of the 19th July, 1854, which was repealed in 1906, strangers were required to withdraw only from below the bar,<sup>1</sup> but since 1906 strangers in all the galleries have been allowed to remain during a division, the doors leading to the seats under the gallery and the seats reserved for officials being locked from the time when the lobby is ordered to be cleared until the declaration of the numbers from the chair.

In the House of Lords, any peer who desires to vote must be present in the house when the question is put from the chair the first or second time. In 1865, after the vote of a peer had been disallowed because he had not been in the house when the question was put,<sup>2</sup> the present arrangement was introduced by which the question is again put from the chair after the doors have been locked (see p. 324).<sup>3</sup>

A similar rule formerly obtained in the House of Commons,<sup>4</sup> but in session 1906, in connection with the changes made in taking divisions which have been already described (see p. 326), the house agreed to a new standing order which provided that a member might vote in a division although he had not heard the question put,<sup>5</sup> and that a member was not obliged to vote although he was in the house when the question was put.<sup>6</sup>

<sup>1</sup> On the 16th June, 1857, a peer remained in one of the division lobbies until after the doors had been locked; and the Serjeant was directed to let him out, without making any report to the house; see also Colchester, i. 519.

<sup>2</sup> 65 L. J. 481; 97 ib. 307, 179 H. D. 3 s. 739. Such an objection could be taken either immediately or subsequently during the sitting, when the division took place, or at another sitting of the house.

<sup>3</sup> 97 L. J. 396.

<sup>4</sup> For decisions of the House of Commons and rulings of the Speaker on the subject, and cases in which the votes of members have been disallowed because they had not heard the question put from the chair, see 74 C. J. 393; 76 ib. 172; 80 ib. 483; 91 ib. 475; 110 ib. 352, 139 H. D. 3 s. 486; 111 C. J. 47; 141 ib. 242; 142 ib. 186. These precedents show that at whatever time it was discovered that members were not present when the question was put, whether during the division,

before the numbers were reported, or after they had been declared, or even at a subsequent sitting, such votes were disallowed.

<sup>5</sup> Accordingly a member who has not heard the question put the first or second time can no longer claim to have the question again stated to him, 40 H. C. Deb. 5 s. 1274. 1338.

<sup>6</sup> Under the practice which prevailed until 1906, when the house proceeded to a division, every member was bound to retire from the house into one of the lobbies. On the 3rd February, 1881, a teller reported that he was unable to clear the house, as several members refused to quit their places. The Speaker, having already called the attention of the house to their conduct during a previous division, now cautioned them that, if they again refused to withdraw, he should consider that they were disregarding the authority of the chair. As they persisted in retaining their seats, the Speaker proceeded to name them, twenty-eight

Peers not  
to vote  
without  
hearing  
question  
put.

Practice  
in the  
House of  
Commons.  
S. O. 29,  
Appendix  
I.

Casting  
voice of  
the  
Speaker.

If the numbers in a division are equal, the Speaker, who otherwise does not vote, must give the casting voice. In the performance of this duty, he is at liberty to vote like any other member, according to his conscience, without assigning a reason; <sup>1</sup> but, in order to avoid the least imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the house final, and to explain his reasons which are entered on the journal.<sup>2</sup>

Prece-  
dents.

The principle which guides a Speaker in giving his casting vote was thus explained by Mr. Speaker Addington. On the 12th May, 1796, on the third reading of the Succession Duty on Real Estates Bill, there having been a majority against "now" reading the bill the third time, and also against reading it that day three months, there was an equality of votes on a third question, that the bill be read the third time to-morrow, when the Speaker gave his casting vote with the ayes, saying "that upon all occasions when the question was for or against giving to any measure a further opportunity of discussion, he should always vote for the further discussion, more especially when it had advanced so far as a third reading; and that when the question turned upon the measure itself—for instance, that a bill do or do not pass—he should then vote for or against it, according to his best judgment of its merits, assigning the reasons on which such judgment would be founded." <sup>3</sup>

Casting  
voice sub-  
mitting a  
matter to  
the  
further  
decision  
of the  
house.

The course adopted by successive Speakers, in giving their casting vote, can be traced in the following examples, beginning with cases of the casting vote given so as to afford the house an opportunity for a further decision.

in number, and they were severally suspended from the service of the house, 136 C. J. 56, 258 H. D. 3 s. 78. For cases in which the chairman reported members to the house for similar conduct in committee of the whole house, see 151 C. J. 241; 156 ib. 62; 159 ib. 389. On the 21st May, 1896, a member who declined to leave the house to go into a division lobby was directed by the chairman to withdraw immediately from the house, and on his declining to do so was removed by the Serjeant-at-arms, 151 C. J. 242. As the rooms behind the Speaker's chair are not within the house for the purposes of a division, members could retire to these rooms after the house had

been cleared for a division, and before the question had been put from the chair a second time, 123 H. D. 3 s. 713; 254 ib. 730; 30 Parl. Deb. 4 s. 1416; 56 ib. 871.

<sup>1</sup> 93 C. J. 537.

<sup>2</sup> 93 C. J. 587; 95 ib. 536; 98 ib. 163; 102 ib. 872; 106 ib. 205; 142 ib. 397, 317 H. D. 3 s. 2015; 152 C. J. 219; 160 ib. 105.

<sup>3</sup> Colchester, i. 57, 51 C. J. 764. Similarly the voices being equal on the 24th February, 1797, on the question for going into committee on the Quakers Bill, Mr. Speaker Addington gave his vote with the ayes, Sidmouth, i. 187, Colchester, i. 85, 52 C. J. 335.



In the proceedings taken against Lord Melville, 8th April, 1805, which resulted in his impeachment, the numbers were equal upon the *previous* question (moved in the form, "That the question be now put")—that question being the motion on which Lord Melville's impeachment was based. Mr. Speaker Abbot gave his casting vote in favour of the previous question, on the ground that "the original question was now fit to be submitted to the judgment of the house."<sup>1</sup>

On the 10th May, 1860, the numbers being equal upon an amendment to a bill, on report, Mr. Speaker Denison stated that as the house was unable to form a judgment upon the propriety of the proposed amendment, he should best perform his duty by leaving the bill in the form in which the committee had reported it to the house.<sup>2</sup> A similar course has generally been taken on stages in the progress of bills—often without stating any reasons.<sup>3</sup>

On the third reading of the Tests Abolition (Oxford) Bill, 1st July, 1864, an adverse amendment having been negatived by a majority of ten, a debate was raised upon the main question that the bill be now read the third time, during which many members came into the house; and upon the division the numbers were equal. Under these circumstances, Mr. Speaker Denison said that he would afford the house another opportunity of deciding upon the merits of the bill, by declaring himself with the ayes, and the question that the bill do pass was negatived by a majority of two.<sup>4</sup>

On the 3rd April, 1905, the numbers being equal upon an instruction to the committee on the London County Council (Tramways) Bill to omit certain tramways, Mr. Speaker Gully stated that in order that the matter might be considered by the committee and that the house might have a further opportunity of coming to a more decisive conclusion he gave his voice with the noes.<sup>5</sup>

In the following cases the casting vote decided the matter before the house, and was given upon the judgment which the Speaker formed upon the occasion which required his vote.

On a question for the appointment of a committee to inquire into delays in the Court of Chancery, 5th June, 1811, Mr. Speaker Abbot voted with the ayes, it being upon a question "whether or not this

Casting  
voice  
which  
decided a  
matter  
before the  
house.

<sup>1</sup> 60 C. J. 201, Colchester, i. 548.

<sup>2</sup> 115 C. J. 235.

<sup>3</sup> 76 C. J. 439; 83 ib. 292; 92 ib. 496;  
93 ib. 587; 95 ib. 536; 96 ib. 344; 98 ib.

163; 102 ib. 872; 106 ib. 205.

<sup>4</sup> 119 C. J. 388, Denison, 167.

<sup>5</sup> 160 C. J. 105.

house shall exercise its own power of inquiry into the causes of existing grievances." <sup>1</sup>

On the 26th May, 1826, Mr. Speaker Manners-Sutton, the numbers being equal, voted in favour of a resolution regarding the practice of the house in cases of bribery at elections, because the resolution was merely declaratory of what are the powers, and what is the duty of the house. <sup>2</sup>

On a motion for an address to the Crown in behalf of political offenders, 25th May, 1841, Mr. Speaker Shaw-Lefevre declared himself with the noes, as "the vote, if carried, would interfere with the prerogative of the Crown." <sup>3</sup>

On a question for referring a petition, complaining of bribery at Bridport, to a committee of inquiry, 19th May, 1846, the numbers being equal, Mr. Speaker Shaw-Lefevre declared himself with the noes, because the house had no better means of forming a judgment upon the question than a committee, who had declined to entertain it, and it was open to an elector of the borough, under the provisions of the Act 5 & 6 Vict. c. 2, to present another petition to the house. <sup>4</sup>

The numbers being equal on the third reading of the Church Rates Abolition Bill, 19th June, 1861, Mr. Speaker Denison gave his casting vote against the Bill, stating that it appeared to him that a prevailing opinion existed in favour of a settlement of the question, different, in some degree, from that contained in the bill; and that he thought he should best discharge his duty by leaving to the future judgment of the house to decide what change in the law should be made, rather than to take the responsibility of the change on his single vote. <sup>5</sup>

On the 24th July, 1862, the numbers being equal on a question for disagreeing to a Lords' amendment, Mr. Speaker Denison said he should support the bill, as passed by the House of Commons. <sup>6</sup>

The numbers being equal upon a proposed resolution relative to Trinity College, Dublin, 24th July, 1867, Mr. Speaker Denison stated "that this was an abstract resolution, which, if agreed to by the house, would not even form the basis of legislation: but undoubtedly the principle involved in it was one of great importance, and, if affirmed by a majority of the house, it would have much force. It should, however, be affirmed by a majority of the house, and not

<sup>1</sup> 66 C. J. 395, Colchester, ii. 334.

<sup>2</sup> 81 C. J. 387.

<sup>3</sup> 96 C. J. 344.

<sup>4</sup> 101 C. J. 731.

<sup>5</sup> 116 C. J. 282, Denison, 94. See also

Speaker's vote "no" on second reading of a bill, 2nd April, 1821, 76 C. J. 229.

<sup>6</sup> 117 C. J. 365, 168 H. D. 3 s. 785, Denison, 124.

merely by the casting vote of its presiding officer. For these reasons he declared himself with the noes." <sup>1</sup>

The numbers being equal on an amendment proposed to be inserted in the Regency Bill, on consideration as amended, on the 25th July, 1910, the effect of which was to replace words which had been in the bill as introduced but had been left out in committee, the Speaker stated that he thought that he ought to vote for the bill in the form in which it was originally introduced into the house, and accordingly he gave his voice with the ayes.<sup>2</sup>

When the voices are equal in a committee of the whole house the chairman, who does not otherwise vote, gives his casting vote, and in doing so is guided by the same principles as the Speaker in the house.<sup>3</sup> Thus, the numbers being equal in committee of supply, upon the reduction of a vote, the chairman declared himself with the noes, as the committee would have an opportunity of voting upon any other reduction of the proposed vote,<sup>4</sup> and in committee on a bill on an amendment to leave out words the chairman has given his casting vote for their retention in the bill, as the house would have another opportunity of considering the same question on consideration of the bill as amended.<sup>5</sup>

Although the Speaker is restrained by usage while he is in the chair in the exercise of his independent judgment, he is entitled in a committee of the whole house to speak and vote like any other member. Of late years, however, he has generally abstained from the exercise of this right. Among the earliest examples are those of Mr. Speaker Glanville, on the 4th May, 1640, upon the granting of twelve subsidies to the king; <sup>6</sup> and of Mr. Speaker Lenthall, on the 22nd January, 1641, against the "brotherly gift" to the Scottish nation.<sup>7</sup> Sir Fletcher Norton spoke strongly on the influence of the Crown, on the 6th April, 1780; and Mr. Speaker Grenville, on the Regency question, on the 16th January, 1789.<sup>8</sup> On the 17th December, 1790, Mr. Speaker argued at length the question of the abatement of an impeachment by a dissolution of Parliament and cited a long list of precedents.<sup>9</sup> On the 4th December, 1797, Mr. Speaker Addington

Casting  
vote of  
chairman  
in com-  
mittee of  
whole  
house.

Speaker's  
speaking  
in com-  
mittee.

<sup>1</sup> 122 C. J. 395. On two occasions the Speaker has voted for the postponement of a proceeding to a future day, 133 C. J. 423, 142 H. D. 3 s. 1712; 142 C. J. 397.

<sup>2</sup> 165 C. J. 265, 19 H. C. Deb. 5 s. 1717.

<sup>3</sup> For cases in which the chairman has given his casting vote without assigning a reason, see 89 C. J. 430; 103 ib. 661;

114 ib. 333; 115 ib. 256.

<sup>4</sup> 124 C. J. 371, 198 H. D. 3 s. 950.

<sup>5</sup> 131 C. J. 398, 231 H. D. 3 s. 772.

<sup>6</sup> Clarendon, book ii. § 73.

<sup>7</sup> D'Ewes, Notes on Long Parliament; Harleian MSS. (162), p. 160.

<sup>8</sup> 27 Parl. Hist. 970; Sidmouth, i. 59.

<sup>9</sup> 28 Parl. Hist. 1043.

addressed the committee on the assessed taxes from the gallery.<sup>1</sup> The same Speaker also addressed a committee on the union with Ireland in 1799 ;<sup>2</sup> and on the 6th May, 1800, spoke in the committee upon the Inclosure Bill.<sup>3</sup> In committee on the charges against the Duke of York, 16th February, 1809, Mr. Speaker Abbot moved the commitment of Captain Sandon, a witness, for prevarication.<sup>4</sup> On the 1st June, 1809, he made a speech in committee on Mr. Curwen's bill for preventing the sale of seats in Parliament ;<sup>5</sup> and on the 4th February, 1811, in committee on the Lords' resolution for a commission for giving the royal assent to the Regency Bill.<sup>6</sup> Finally he addressed a committee on the Roman Catholic Relief Bill in 1813 and carried an amendment excluding Catholics from Parliament, which caused the abandonment of the Bill.<sup>7</sup> On the 26th March, 1821, Mr. Speaker Manners Sutton spoke in committee on the Roman Catholic Disability Bill ;<sup>8</sup> and again on the 6th May, 1825, in committee on a similar bill ;<sup>9</sup> and on the 2nd July, 1834, in committee on the bill for admitting dissenters to the universities, he spoke against the principle of the bill.<sup>10</sup> On the 4th August, 1843, Mr. Speaker Shaw Lefevre spoke in committee of supply on a point of order,<sup>11</sup> and on the 21st April, 1856, in the same committee, the management and patronage of the British Museum by the principal trustees having been called in question, he spoke in defence of himself and his colleagues, with great applause.<sup>12</sup> On the 9th June, 1870, Mr. Speaker Denison spoke and voted in committee on the Customs and Inland Revenue Bill, in support of a clause exempting horses kept for husbandry from licence duty, if used in drawing materials for the repair of roads.<sup>13</sup>

Publica-  
tion of  
division  
lists.

After the division, the division lists are examined by the clerks and sent off to the printer, who prints the marked names in their order ; and the division lists are delivered on the following morning with the " Votes and Proceedings " of the house.<sup>14</sup> If an error occurs in marking the name of a member upon the division list, the

<sup>1</sup> Colchester, i. 121.

<sup>2</sup> Sidmouth, i. 219. 225 ; Colchester, i. 175 ; and see 34 Parl. Hist. 448 ; 2 Plowden's Hist. of Ireland, 909.

<sup>3</sup> Colchester, i. 203.

<sup>4</sup> 12 H. D. 1 s. 743, Colchester, ii. 166.

<sup>5</sup> 14 H. D. 1 s. 837, Colchester, ii. 193.

<sup>6</sup> 18 H. D. 1 s. 1107, Colchester, ii. 315, Plumer Ward, i. 379.

<sup>7</sup> Colchester, i. p. xxii. ; ii. 447.

<sup>8</sup> 4 H. D. 2 s. 1451.

<sup>9</sup> 13 H. D. 2 s. 434.

<sup>10</sup> 24 H. D. 3 s. 1092.

<sup>11</sup> 71 H. D. 3 s. 294.

<sup>12</sup> 141 H. D. 3 s. 1352.

<sup>13</sup> 201 H. D. 3 s. 1815, Denison, 257.

<sup>14</sup> The issue of the printed lists of the divisions began on Monday, 22nd Feb. 1836.

error is corrected, upon application made at the table of the house or to one of the division clerks, by a memorandum published at the earliest opportunity in the "Votes and Proceedings."

In committees of the whole house, divisions were formerly taken by the members of each party crossing over to the opposite side of the house: but the same forms are now observed in all divisions, whether in the house or in committee. A division in committee cannot be taken unless there be two tellers for each side, as in the house itself.<sup>1</sup>

It is in the power of two members, when a question is put from the chair, to compel the house to take a division thereupon; and experience proved the necessity of placing this power under some restraint.<sup>2</sup> By the standing order of the 27th November, 1882, power was given to the chair, under certain restrictions, to take the vote of the house upon dilatory motions, such as a motion to adjourn a debate, by calling upon the members who challenged the decision of the chair, to rise up in their places. This standing order was repealed during the session of 1888; and a standing order was passed, whereby the Speaker or the chairman, if in his opinion a division is frivolously or vexatiously claimed, may take the vote of the house or committee, by calling upon the members who support, and who challenge his decision, to rise successively in their places; and he, thereupon, as he may think fit, either declares the determination of the house or the committee, or names tellers for a division. In case there is no division, the number of the minority who have risen is declared from the chair,<sup>3</sup> and their names, having been taken down in the house, are printed with the lists of divisions,<sup>4</sup> but the record of these names is not numbered in the list as if it were a division.<sup>5</sup>

In the Lords, not only those peers who are present may vote in a division, but on certain questions, absent peers are entitled, by ancient usage, regulated by several standing orders, to vote by proxy.<sup>6</sup> In 1867, however, a Lords' committee recommended that the practice of using proxies should be discontinued; and on the

Divisions  
in com-  
mittee.

Divisions  
frivo-  
lously  
claimed.

S. O. 30,  
Appendix  
I.

Proxies  
(Lords).

<sup>1</sup> 105 C. J. 364.

<sup>2</sup> See the author's pamphlet on Public Business in Parliament, 1849, 2nd edit. p. 29, and the report of the committee on public business, Parl. Pap. (H. C.) sess. 1878, No. 268.

<sup>3</sup> Members who have proceeded to the lobby, before the question has been put a second time, intending to vote with the

minority cannot claim subsequently to have their names added to this list, 135 Parl. Deb. 4 s. 707.

<sup>4</sup> 145 C. J. 580; 146 ib. 476; 147 ib. 102, &c.

<sup>5</sup> 48 Parl. Deb. 4 s. 1248; 135 ib. 721.

<sup>6</sup> During the king's illness, in 1811, it was doubtful whether proxies were admissible; see 18 H. D. 1 s. 976.

31st March, 1868, by standing order No. 34, the house agreed to discontinue the practice of calling for proxies, and resolved that two days' notice must be given of a motion for the suspension of the standing order. No attempt has since been made to suspend this order, and the practice, though capable of being revived on any occasion at the pleasure of the house, may be regarded as in abeyance.

**Pairs.**

A practice, similar in effect to that of voting by proxy, has for many years been resorted to in both houses. A system known by the name of "pairs," enables a member to absent himself, and to agree with another member that he also shall be absent at the same time.<sup>1</sup> By this mutual agreement, a vote is neutralized on each side of a question, and the relative numbers in the division are precisely the same as if both members were present. The division of the house into distinct political parties facilitates this arrangement, and members pair with each other, not only upon particular questions, or for one sitting of the house, but for several weeks or even months at a time. There can be no parliamentary recognition of this practice, although it has never been expressly condemned;<sup>2</sup> and it is therefore conducted privately by individual members, or arranged by the gentlemen known as "the whips," who are entrusted by their political parties with the office of collecting their respective forces on a division.

**Protests  
(House of  
Lords).**

In addition to the power of expressing assent or dissent by a vote, peers have the right, without asking leave of the house, to record their opinion and the grounds of it by a "protest," which is entered in the journals, together with the names of all the peers who concur in it. Pursuant to standing order No. 35, the entry of a protest in the Clerk's book must be made on the next sitting day, before the hour of two o'clock, and must be signed before the rising of the house the same day,<sup>3</sup> but leave has been given to lords sometimes to enter a protest against any vote of the house, some time after

<sup>1</sup> On an occasion when, the House of Commons, having met on Monday, sat until half-past one o'clock on Tuesday afternoon, members who paired on Monday for "the night" voted in divisions which took place after nine o'clock on Tuesday morning, because, as they had not paired for "the sitting," but for "the night," it was held that the compact terminated on Tuesday morning.

Doubts having arisen regarding this course of action, a memorandum was drawn up by the "whips" for the government and for the opposition, for their guidance, if a similar occasion arose.

<sup>2</sup> A motion condemning this practice, 6th March, 1743, was negatived, on division, 24 C. J. 602.

<sup>3</sup> As to dissents in judicial cases, see Macquenn, 28. 29.

the period limited by the standing order.<sup>1</sup> When a protest has been drawn up by any peer, other lords may either subscribe it without remark, if they assent to all the reasons assigned in it; or they may signify the particular reasons which have induced them to attach their signatures:<sup>2</sup> but, by the usage of the House of Lords, the privilege of entering a protest is restricted to those lords who were present and voted upon the question to which they desire to express their dissent. Leave is sometimes given to lords to sign the protest of another peer, although they were not present when the question was put.<sup>3</sup>

Any protest or reasons, or parts thereof, if considered by the house to be unbecoming or otherwise irregular, may be ordered to be expunged.<sup>4</sup> Protests or reasons expunged by order of the house have also been followed by a second protest against the expunging of the first protest or reasons, by which the object of the house has been defeated.<sup>5</sup>

On the 10th April, 1690, certain reasons having been expunged, the Duke of Somerset desired that, as he had protested for those very reasons, he might have leave to withdraw his name from the protest, which was granted to him and to any other lords who pleased.<sup>6</sup> On the 24th June, 1824, leave was given to the peers who had entered a protest against the Earl Marshal's bill to withdraw and amend it as it stated certain facts incorrectly.<sup>7</sup>

The distribution among members of a circular addressed to them by another member, asking for their vote in favour of a motion which the member intended to move, or to state whether their vote would be for or against the motion, was condemned by the Speaker, as a proceeding "contrary to the best usages and traditions of the house, and which would detract from its character."<sup>8</sup>

In both houses personal interest affects the right of members to vote in certain cases. In 1796, a general resolution was proposed in

<sup>1</sup> 101 L. J. 257. 480; 122 ib. 216.

<sup>2</sup> Protests with reasons date from 1641, Clarendon, book iv. § 254.

<sup>3</sup> 101 L. J. 493. In session 1823, the Duke of Somerset had not voted on the question for the address, but had nevertheless protested against it. His protest, as he had been present at the debate, though he had not voted, was allowed to stand on the journal, Colchester, iii. 273. The protest against the Corn Importation Bill was signed by certain

peers who had not been present, 87 H. D. 3 s. 1137; see also 343 ib. 8. 134.

<sup>4</sup> 16 L. J. 655. 757; 17 ib. 55; 19 ib. 220. 480. 481; 40 ib. 49; 43 ib. 82.

<sup>5</sup> 14 L. J. 459 (8th and 10th April, 1690); Burnet, ii. 41; 16 L. J. 655; 19 ib. 220; 21 ib. 695. 710; 22 ib. 73; 43 ib. 82.

<sup>6</sup> 14 L. J. 459.

<sup>7</sup> 11 H. D. 2 s. 1482.

<sup>8</sup> 323 H. D. 3 s. 1439.

Peers. the Lords, "That no peers shall vote who are interested in a question : " but it was not adopted.<sup>1</sup> It is presumed, however, that such a resolution was deemed unnecessary ; and that it was held that the personal honour of a peer will prevent him from forwarding his own pecuniary interest by his votes in Parliament. By standing order (Private Bills) No. 98, Lords are " exempted from serving on the committee on any private bill wherein they shall have any interest."

Commons. In the Commons it is a rule that no member who has a direct pecuniary interest in a question shall be allowed to vote upon it : but, in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote character. On the 17th July, 1811, the rule was thus explained by Mr. Speaker Abbot : " This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy." <sup>2</sup> This opinion was given upon a motion for disallowing the votes of the bank directors upon the Gold Coin Bill, which was afterwards negatived without a division.

Objections over-ruled by the Chair. On occasions when the objection of personal interest in a vote has been raised, which came obviously within the exemption from the application of the rule, defined by Mr. Speaker Abbot, the Speaker or the chairman has overruled the objection, or has decided that a motion to disallow the vote would be out of order.<sup>3</sup>

Personal interest in votes on questions of public policy. The only instance to be found in the journals in which the vote of a member has been disallowed upon a question of public policy is the case of the votes of three members given in session 1892 in favour of the grant in aid of a preliminary survey for a railway from the coast to Lake Victoria Nyanza, which had been undertaken on behalf

<sup>1</sup> 40 L. J. 640. 650.

<sup>2</sup> 20 H. D. 1 s. 1001.

<sup>3</sup> Speaker's rulings : 212 H. D. 3 s. 1136 (see p. 340) ; 287 ib. 875 (member of a corporation petitioners against a bill moving an instruction for the protection of that corporation) ; 334 ib. 732 (minister voting against reduction of his official salary) ; 61 Parl. Deb. 4 s. 826 (owners of land in Ireland on clause providing for payment out of public money of landlord's share of rates, Local Government (Ireland) Bill) ; chairman's rulings : 206 H. D. 3 s. 1742 (votes of officers on full pay in committee on Army Regulation Bill on clause giving compensation

to officers holding saleable commissions) ; 345 ib. 1232 ; 137 Parl. Deb. 4 s. 910. 1305 (votes of members interested in licensed property on proposals for giving compensation for extinction of licences) ; 156 ib. 505 (votes of members who were solicitors on amendment to clause of Justices of the Peace (No. 2) Bill making solicitors eligible to the commission of the peace) ; 29 H. C. Deb. 5 s. 1679 (voting of salaries of members) ; 48 ib. 609. 745 (vote of member professionally retained by a private client in an inquiry on the vote in committee of supply which included a provision for the cost of the inquiry).



of the government by the British East Africa Company, of which two of the members in question were directors and shareholders and the third was a shareholder.<sup>1</sup> On the 1st June, 1797, however, Mr. Manning submitted to the Speaker whether he might vote, consistently with the rules of the house, upon the proposition of Mr. Pitt for granting compensation to the subscribers to the Loyalty Loan, he being himself a subscriber. The Speaker explained generally the rule of the house and Mr. Manning declined to vote.<sup>2</sup> After the division, the votes of two other members were objected to as being subscribers: but one stated that he had parted with his subscription, and the other that he had determined not to derive any advantage to himself; upon which questions for disallowing their votes were severally negatived.<sup>3</sup> On the 3rd June, 1824, a division took place on a "Bill for repealing so much of an Act 6 Geo. I., as restrains any other corporations than those in the Act named, and any societies or partnerships, from effecting marine insurances, and lending money on bottomry." An entry in the journal in the form of a memorandum states that an objection was made to the numbers declared by the tellers, that certain members who voted with the ayes were personally interested in the passing of the bill, as being concerned in the Alliance Insurance Company: but it was decided that they were not so interested as to preclude their voting for the repeal of a public act.<sup>4</sup> On the 10th July, 1844, on the question for hearing counsel against a bill for suspending certain actions for penalties under the gaming laws, objections were taken to the votes of members who were defendants, but one stated that it was not his intention to take advantage of the provisions of the bill and plead the same in bar of such action, and the other that he had not been served with any process. Motions for disallowing their votes were, therefore, withdrawn.<sup>5</sup> On the 11th July, 1844, the vote of a member upon the second reading of a public bill relating to railways was objected to upon the ground that he had a direct pecuniary interest as the proprietor of railroad shares, but a motion for disallowing his vote was withdrawn.<sup>6</sup>

The votes of members, who were subscribers to undertakings proposed to be sanctioned by a private bill,<sup>7</sup> or who were otherwise

Personal  
interest in  
votes on  
private  
bills.

<sup>1</sup> 147 C. J. 98. See also Report of Select Committee on Members of Parliament (Personal Interest), Parl. Pap. (H. C.) sess. 1896, No. 274.

<sup>2</sup> 33 Parl. Hist. 791.

<sup>3</sup> 52 C. J. 632.

<sup>4</sup> 79 C. J. 455.

<sup>5</sup> 99 C. J. 486.

<sup>6</sup> 99 C. J. 491.

<sup>7</sup> 80 C. J. 110; 91 ib. 271.

interested in a private bill, have frequently been disallowed. In 1800, the votes of three members were disallowed, as having a direct interest in a bill for incorporating a company for the manufacture of flour, wheat and bread.<sup>1</sup> On the 20th May, 1825, notice was taken that a member, who had voted with the ayes on the report of the Leith Docks Bill, had a direct pecuniary interest in passing the bill: he was heard in his place and stated that on that account he had not voted in the committee on the bill, and that he had voted, in this instance, through inadvertence. His vote was ordered to be disallowed.<sup>2</sup> Motions to disallow the votes of shareholders in the company which was promoting the bill on which the division was taken, have been negatived.<sup>3</sup> On the second reading of the Birmingham and Gloucester Railway Bill, 15th May, 1845, objection was taken to one of the tellers for the noes, as being a landholder whose property would be injured by the proposed line; while on the second reading of the London and North Western Railway Bill, 14th April, 1896, objection was taken to the vote of a member on the ground that he was a director of the company. In both cases the motion for disallowing the vote was withdrawn.<sup>4</sup> On the 15th July, 1872, objection was taken to two of the tellers in a division, which had been taken against the Birmingham Sewerage Bill, on the ground of personal pecuniary interest: but the Speaker stated that they had no such pecuniary interest in the bill as would disqualify them from voting against it.<sup>5</sup>

Personal  
interest in  
votes on  
compet-  
ing bills.

The extent to which the rule of personal interest in a vote given by a member against a private bill, which would create a project intended to compete with an undertaking in which he has a pecuniary interest, is as yet undecided. As the Speaker stated, on the 12th May, 1885, there is no rule of the house on the subject. He recommended that each member should be guided by his own feelings in the matter and should vote, or abstain from voting, as he thought fit; though he added that members should be aware that they ran the risk of having their votes disallowed by the subsequent action of the house.<sup>6</sup> On the 22nd February, 1825, a member voted against a bill for establishing the London and Westminster Oil Gas Company and notice was taken that he was a proprietor in the Imperial Gas

<sup>1</sup> 35 Parl. Hist. 463, Perceval, i. 76.

<sup>2</sup> 80 C. J. 443; see also *ib.* 110; 91 *ib.* 271.

<sup>3</sup> 138 C. J. 189; 139 *ib.* 103.

<sup>4</sup> 100 C. J. 436; 151 *ib.* 144.

<sup>5</sup> 212 H. D. 3 s. 1136.

<sup>6</sup> 298 H. D. 3 s. 342.

Light and Coke Company, and thereby had a pecuniary interest in opposing the bill. A motion was made that his vote be disallowed: but, after he had been heard in his place, it was withdrawn.<sup>1</sup> On the 16th June, 1846, objection was taken to the vote of a member who had voted with the noes, because, as director and shareholder in the Caledonian Railway Company, he had a direct pecuniary interest in the rejection of the Glasgow, Dumfries and Carlisle Railway Bill. Whereupon he stated that the sole direct interest that he had in the Caledonian Railway was as holder of twenty shares to qualify him to be a director in that undertaking; and that he voted against the bill, conceiving the proposed railway to be in direct competition with the Caledonian Railway, as decided by the legislature in the last session. A question for disallowing his vote on the ground of direct pecuniary interest was negatived.<sup>2</sup> On the 9th March, 1886, objection was taken to the votes of two members given in favour of committing the Manchester Ship Canal Bill to a select committee on the ground that, as directors of the London and North Western Railway Company, the receipts and dividends of which might be affected by the construction of the canal, they were pecuniarily interested in the matter. The motion for disallowing their votes was negatived.<sup>3</sup>

An objection to a vote, on the ground of personal interest, cannot be raised except upon a substantive motion, that the vote given in a division be disallowed, and cannot be brought forward as a point of order (see p. 248).<sup>4</sup> An objection on the same ground against a vote given in committee of the whole house must be determined by the committee upon a motion made therein, that the vote be disallowed,<sup>5</sup> and a motion to report progress, in order to bring such an objection before the house, has not been permitted.<sup>6</sup> The member whose vote is under consideration on the ground of personal interest, having been heard in his place, should withdraw immediately, and before the question founded thereon has been proposed.<sup>7</sup>

Time and manner for making motions to disallow votes.

<sup>1</sup> 80 C. J. 110.

<sup>2</sup> 101 C. J. 873.

<sup>3</sup> 141 C. J. 83.

<sup>4</sup> 285 H. D. 3 s. 1222; 2 Parl. Deb. 4 s. 90; 48 H. C. Deb. 5 s. 607. A motion for a committee to inquire into the legality of votes given in a division has also been held to be out of order, 92 Parl. Deb. 4 s. 419.

<sup>5</sup> 48 H. C. Deb. 5 s. 1085.

<sup>6</sup> 345 H. D. 3 s. 1232-1235. Owing to the interruption of business at ten minutes to seven o'clock, a motion that certain

votes be disallowed, given in the committee of supply, on the 4th March, 1892, was made in the committee on the 11th March, 147 C. J. 98. On the 14th August, 1911, being the last allotted day for committee of supply, objection was taken to a member's vote after ten o'clock notwithstanding standing order No. 15, and the chairman ruled upon the objection, 29 H. C. Deb. 5 s. 1679.

<sup>7</sup> 91 C. J. 271; 80 ib. 110; 138 ib. 189; 141 ib. 83.

Personal  
interest in  
votes in  
private  
bill com-  
mittees.

The principle of the rule which disqualifies an interested member from voting must always have been intended to apply as well to committees as to the house itself: but it is undeniable that a contrary practice had very generally obtained in committees upon private bills, although it was not brought directly under the notice of the house until the 21st June, 1844, when the Middle Level Drainage Bill committee instructed their chairman to report that a member "had received an intimation that he ought not to vote on questions arising thereon, by reason of his interest in the said bill;" and desired the decision of the house upon the following question: "Whether a member, having property within the limits of an improvement bill, which property may be affected by the passing of the bill, has such an interest as disqualifies him from voting thereon." The reply the house made to the application from the committee was an instruction thereto, "That the rule of this house relating to the vote, upon any question in the house, of a member having an interest in the matter upon which the vote is given, applies likewise to any vote of a member so interested, in a committee."<sup>1</sup> Since that time, committees on opposed private bills are constituted so as to exclude members locally or personally interested; and in committees on unopposed bills, such members are not entitled to vote (see p. 662). A member of a committee on an opposed private bill, or group of bills, will be discharged from further attendance, if it be discovered, after his appointment, that he has a direct pecuniary interest in the bills, or one of them (see p. 669).

Member  
interested  
may pro-  
pose  
motion or  
amend-  
ment.

Although a member interested is disqualified from voting, he is not restrained, by any existing rule of the house, from proposing a motion or amendment. On the 26th July, 1859, Mr. Whalley moved an amendment to a clause added by the Lords to a railway bill, in which he admitted that he was personally interested. In the debate, exception was taken to such an amendment having been proposed by a member having a pecuniary interest: but the Speaker ruled that, though it was a well-known rule of the house, that a member under such circumstances could not be permitted to vote, and though the course adopted was certainly most unusual, yet there was no rule by which the right of a member to make a motion was restrained, and he had been given to understand that Mr. Whalley did not intend to vote.<sup>2</sup> On the 15th June, 1904, Mr. Kerr formally moved the committal to a joint committee of the Leith Corporation Tramways

<sup>1</sup> 76 H. D. 3 s. 16.

<sup>2</sup> 155 H. D. 3 s. 459.

Order Confirmation Bill without objection being taken to his action, although his personal interest in the bill was stated to the house. He did not vote in the subsequent division.<sup>1</sup> Objections that a member alleged to be personally interested could not give a notice of opposition to a bill, and that a member, who moved an instruction to a committee on a private bill, was a member of a corporation which petitioned against the bill, were overruled by the Speaker.<sup>2</sup>

Disallowance of a vote on the score of personal interest is restricted to cases of pecuniary interest and has not been extended to those occasions when the dictates of self-respect and of respect due to the house might demand that a member should refrain from taking part in a division.<sup>3</sup>

The Speaker, when his attention has been called to a breach of order in the course of a division has directed that the division should proceed, and has dealt with the matter when the division was completed.<sup>4</sup>

A member who has not voted upon an amendment is nevertheless entitled to vote upon the main question, when subsequently put.

If a member goes into the wrong lobby, through inadvertence, it is the rule in the Commons, in opposition to the practice of the Lords (see p. 325), to hold the member bound by the vote he has actually given. On the 21st June, 1864, Sir Colman O'Loughlen, in committee on the Court of Chancery (Ireland) Bill, went into the wrong lobby, and carried, by his vote, the question that the chairman do leave the chair. He stated his case to the Speaker, when the house was resumed, but was told that, having heard the question put, there was no remedy for his error.<sup>5</sup> On the 11th November, 1912, it was stated that three members had inadvertently voted in the wrong lobby on an amendment on the 1st November. The Speaker, who was asked whether the division list could be rectified, said that under the old

Personal interest not pecuniary.

Procedure on breach of order during a division.

Voting on main question by member not voting on amendment.

Members voting in the wrong lobby.

<sup>1</sup> 136 Parl. Deb. 4 s. 212.

<sup>2</sup> 263 H. D. 3 s. 1477; 287 ib. 875.

<sup>3</sup> See statement by the Speaker, 18th March, 1864, 174 H. D. 3 s. 340. For cases of members who voted against the motion for their suspension, see Mr. Bradlaugh's votes, 22nd Feb. 1882, 137 C. J. 61; 11th Feb. 1884, 139 ib. 41. On the first occasion, the Speaker stated that it was for the house to consider what should be done with regard to Mr. Bradlaugh's vote; on the second occasion, his

vote was disallowed, because he was not a member of the house. See also division lists, sess. 1887, Nos. 91. 481. 483; sess. 1890, No. 16. For the rule regarding the vote of rival candidates for the Speakership, see p. 145.

<sup>4</sup> 136 C. J. 56, 258 H. D. 3 s. 78; 141 C. J. 347, 308 H. D. 3 s. 1165.

<sup>5</sup> 176 H. D. 3 s. 31. For similar cases, see 111 C. J. 129; 115 ib. 229; 119 ib. 359; 121 ib. 137; 137 ib. 172; 142 H. D. 3 s. 1814; 164 ib. 210.

system a member who said that he had not heard the question put could ask to have the question put again to him and could then give his vote, but that under the system introduced in 1906 it was not necessary to hear the question put and that therefore the votes given on the 1st November could not be rectified, and added that there was no means of correcting a vote inadvertently given wrongly even if an immediate appeal were made to the chair.<sup>1</sup>

Members  
voting in  
both  
lobbies.

Members who have voted in both lobbies in the same division have been allowed on the following day to state as a matter of personal explanation (see p. 285) in which lobby they intended to vote, and the numbers of the division have been directed to be corrected accordingly.<sup>2</sup>

Time and  
manner of  
dealing  
with  
errors in a  
division.

As has been mentioned (see p. 257), the objection that a member's vote in a division was contrary to the way in which he had given his voice in the house must be taken before the declaration of the numbers of the division from the chair; and this rule is enforced regarding a demand to record his vote made by a member who, having gone into a division lobby, has not been counted by the tellers (see p. 328).

<sup>1</sup> 43 H. C. Deb. 5 s. 1716.

<sup>2</sup> 161 C. J. 257, 159 Parl. Deb. 4 s. 58.

## CHAPTER XV.

## PROCEEDINGS OF PARLIAMENT IN PASSING PUBLIC BILLS.

If bills were not a more convenient form of legislation, both houses might enact laws in the form of resolutions, provided the royal assent were afterwards given. In the earlier periods of the constitution of Parliament, all bills were, in fact, prepared and agreed to in the form of petitions from the Commons, which were entered on the Rolls of Parliament, with the king's answer subjoined; and at the end of each Parliament the judges drew up these imperfect records into the form of a statute, which was entered on the Statute Rolls. This practice was incompatible with the full concurrence of the legislature; and matters were often found in the Statute Rolls which the Parliament had not petitioned for, or assented to. Indeed, so far was this principle of independent legislation occasionally carried, that, in the 13th and 21st Richard II., commissions were appointed for the express purpose of completing the legislative measures, which had not been determined during the sitting of Parliament.<sup>1</sup> These usurpations of legislative power were met with remonstrances in particular instances,<sup>2</sup> and at length in the 2nd Henry V., the Commons prayed that no additions or diminutions should in future be made, nor alteration of terms, which should change the true intent of their petitions without their assent; for they stated that they had ever been "as well assenters as petitioners." The king, in reply, granted "that henceforth nothing should be enacted to the petitions of the Commons contrary to their asking, whereby they should be bound without their assent; saving always to our liege lord his real prerogative to grant and deny what him lust, of their petitions and askings aforesaid."<sup>3</sup> No distinct consequences appear immediately to have followed this remarkable petition; and, so long as laws

<sup>1</sup> 3 Rot. Parl. 256 (13th Richard II.); ib. 368 (21st Richard II.); stat. 21st Richard II. c. 16.

<sup>2</sup> 3 Rot. Parl. 102 (5th Richard II. No. 23); 3 ib. 141 (6th Richard II. No. 30);

3 ib. 418 (1st Henry IV.); Hale, C. L. 14; Reeves, History of the English Law, ii. 514; Cotton, Preface; Ruffhead's Statutes, Preface.

<sup>3</sup> 4 Rot. Parl. 22, No. 10.

General  
nature of  
a bill.

Ancient  
mode of  
enacting  
laws.

were enacted in the form of petitions, to any portion of which the king might give or withhold his assent, and attach conditions or qualifications of his own, the assent of the entire Parliament was rather constructive than literal; and the Statute Rolls, however impartially drawn up, were imperfect records of the legislative determinations of Parliament.

Origin of  
modern  
system.

Petitions from the Commons, which were originally the foundation of all laws, were ultimately superseded; and in the reign of Henry VI. bills began to be introduced, in either house, in the form of complete statutes, which were passed in a manner approaching that of modern times, and received the distinct assent of the king in the form in which they had been agreed to by both houses of Parliament. It is true that Henry VI. and Edward IV. occasionally added new provisions to statutes without consulting Parliament;<sup>1</sup> but the constitutional form of legislating by bill and statute, agreed to in Parliament, undoubtedly had its origin and its sanction in the reign of Henry VI.

Similarity  
of prac-  
tices in  
both  
houses.

Before the present method of passing bills in Parliament is entered upon, it may be premised that the practice of the Lords and Commons is so similar in regard to the several stages of bills and the proceedings connected with them, that, except where variations are distinctly pointed out, a statement of the proceedings of one house is equally descriptive of the proceedings of the other.

Where  
bills  
originate.

As a general rule, bills may originate in either house: but the exclusive right of the House of Commons to grant supplies and to impose and appropriate all charges upon the people, renders it necessary to introduce by far the greater proportion of bills into that house.

Bills con-  
cerning  
privileges  
of one  
house.

A bill which concerns the privileges or proceedings of either house, should, in courtesy, commence in that house to which it relates,<sup>2</sup> but bills affecting the privileges of the other house have, nevertheless, been admitted without objection.<sup>3</sup> Amendments,

<sup>1</sup> Ruffhead's Statutes, Preface; Cotton, Preface.

<sup>2</sup> 3 Hatsell, 69; 1 Bl. Com. 168.

<sup>3</sup> Votes by Proxy Abolition Bill, 1832, 11 H. D. 3 s. 1156; Election of Scotch Representative Peers Bill, 1869, 194 ib. 988; Members' Seats Vacating Bill (Lords), 8th June, 1832, 64 L. J. 286. Lord Radnor thought the other house "might take a technical objection to the measure, on the ground that it was one

which ought not to have arisen in the House of Lords." Lord Northampton did not think "the subject was one with which their lordships had a right to interfere," 13 H. D. 3 s. 611. 1086. Bishops in Parliament Bills, 1834, 1836, and 1837. The Irish bishops were excluded from their seats in the House of Lords, in 1869, by a bill brought from the Commons. Lords Spiritual Bill, 1870, 125 C. J. 269.



however, concerning the privileges and jurisdiction of the Lords, have given rise to discussions in both houses.<sup>1</sup>

The Lords claim that bills for the restitution of honours and in blood should commence with them; and such bills are presented to that house by his Majesty's command (see p. 761). Restitution bills.

Bills of attainder, and of pains and penalties, being of a judicial character, generally originate in the House of Lords. Attainder bills.

A bill for a general pardon, or act of grace, as it is commonly termed, originates with the Crown, and is read once only in each house, all the members being uncovered, after which it receives the royal assent in the ordinary form. Such a bill cannot be amended by either house of Parliament, but must be accepted in the form in which it is received from the Crown, or rejected.<sup>2</sup> Act of grace or general pardon.

An act of indemnity, protecting persons against the consequences of any breach of the law, is proceeded with as an ordinary bill, though the bill is usually passed through all its stages at one sitting as being an urgent matter.<sup>3</sup> Bills of indemnity.

Bills are divided into the two classes of public and private bills. The former, relating to matters of public policy, are introduced directly by members of the house, while the latter are founded upon the petitions of parties interested. The greater part of the proceedings described in this chapter apply equally to both classes of bills: but the progress of private bills is governed by so many peculiar regulations and standing orders, in both houses, that an entire separation of the two classes can alone make the progress of either intelligible. Public and private bills.

In the House of Lords, any peer is at liberty to present a bill, and to have it laid upon the table, without notice.<sup>4</sup> In the Commons, a member may either present a bill<sup>5</sup> (see p. 352) or move for leave to Introduction of bills.

<sup>1</sup> See debate in the Lords on the Court of Chancery Improvement Bill (then in the Commons), 23rd June, 1851, 117 H. D. 3 s. 1069; and debates in Lords and Commons in 1873 on amendments proposed to be made in the Commons to the Judicature Bill, by which appeals from the courts of Scotland and Ireland were to be withdrawn from the House of Lords, 217 ib. 10. 154.

<sup>2</sup> 14 L. J. 502. 503 (1690); 25 C. J. 406 (1747); Burnet, iv. 121; Macaulay, Hist. iii. 575.

<sup>3</sup> Earl of Winchelsea's Indemnity Bill, 1820, 75 C. J. 275. 276; Lord Harbrough's Indemnity Bill, 1820, 75 ib. 478; Earl of Scarborough's Indemnity

Bill, 1841, 96 ib. 542; Forsyth's Indemnity Bill, 1866, 121 ib. 239; Lord Byron's Indemnity Bill, 1880, 135 ib. 306, 254 H. D. 3 s. 646; Lord Plunket's Indemnity Bill, 1880, 135 C. J. 371. 415.

<sup>4</sup> 8 Parl. Hist. 1179; 3 H. D. 1 s. 42; 13 H. D. 3 s. 1188. By standing order No. 37 the name of the lord presenting a bill is printed in the minutes.

<sup>5</sup> Notices of the presentation of bills without an order of the house for their introduction are set down on the notice paper at the commencement of public business, immediately before the notices of motions that may be taken at that time.

bring in a bill,<sup>1</sup> but in either case due notice must have been given.<sup>2</sup>

Motion for  
leave to  
introduce  
bill.

Commons.

In making a motion for leave to bring in a bill, a member may explain the object of the bill, and give reasons for its introduction; but unless the motion be opposed, this is not the proper time for any lengthened debate upon its merits. When an important measure is offered by a minister or other member, this opportunity is frequently taken for a full exposition of its character and objects: but otherwise, debate should be avoided at this stage, unless it be expected that the motion will be negatived, and that no future occasion will arise for discussion.<sup>3</sup> If the motion be agreed to, the bill is ordered to be prepared and brought in by the mover and seconder,<sup>4</sup> and by such other members as may be thought expedient.<sup>5</sup> Members also have been nominated by the house to join with the members ordered to bring in a bill, either in substitution for, or in addition to, those included in the order of leave.<sup>6</sup> Debate on the merits of the bill is not allowed on such an occasion.<sup>7</sup> Instructions may be given to these gentlemen to make such provision in the bill,

<sup>1</sup> For a discussion of the procedure in moving for leave to bring in a bill and for cases in which a motion was made "to bring up a bill," see 8 Parl. Hist. 1178.

<sup>2</sup> Notice of the presentation of a bill without obtaining leave is prescribed by standing order 31 (2). In the case of a motion for leave to bring in a bill notice is required by the practice of the house. Notice has been dispensed with in case of certain bills on the ground of urgency, e.g. 3rd August, 1914, Postponement of Payments Bill, 5th August, Injuries in War (Compensation) Bill, 6th August, Currency and Bank Notes Bill, Electoral Disabilities (Naval and Military Service) Removal Bill, 7th August, Defence of the Realm Bill, 8th August, Unreasonable Withholding of Foodstuffs Bill, 10th August, Special Constables (Scotland) Bill, and Housing (No. 2) (Extension to Ireland) Bill, 25th August, Currency and Bank Notes Amendment Bill and twelve other bills, 26th August, Courts (Emergency Powers) Bill, 9th September, Police Constables (Naval and Military Service) Bill and six other bills, 10th September, Irish Police Constables (Naval and Military Service) Bill and Army Pensions Bill, 3rd June, 1915, Re-election of Ministers Bill and Ministry of Munitions Bill, 12th

October, American Loan Bill.

<sup>3</sup> The lengthened debate on this question is of comparatively recent origin. Debate on the Protection of Life and Property (Ireland) Bill continued over five sittings, 24th Jan. to 2nd Feb. 1881, and was closed by Mr. Speaker Brand (see p. 255, n. 3); Government of Ireland Bill, 1886, four sittings, 1893, four sittings; Criminal Law and Procedure (Ireland) Bill, 1887, five sittings, and four sittings on the motion to give precedence to procedure on the Bill.

<sup>4</sup> This order is ordinarily formal; but, 20th Feb. 1852, Lord Palmerston having carried an amendment to the motion for leave to bring in Lord John Russell's Militia Bill, discussion arose upon the question, by whom the bill should be brought in, 119 H. D. 3 s. 876.

<sup>5</sup> The Speaker decided, 1st Feb. 1893 (private ruling), that the names of members ordered to bring in a bill should not exceed twelve in number, while the number of names on the back of a bill presented without an order of the house for its introduction is similarly limited, 104 Parl. Deb. 4 s. 1292.

<sup>6</sup> 91 C. J. 613. 632; 113 ib. 92. 262; 116 ib. 219. 226; 130 ib. 132. 171.

<sup>7</sup> 171 H. D. 3 s. 478. 521.

as has been agreed to by the house on the reports from committees of the whole house which relate to charges upon the people.<sup>1</sup> Amendments have been made or proposed to a question for leave to bring in a bill, either hostile to the motion,<sup>2</sup> or to effect the alteration thereof.<sup>3</sup> On the 20th February, 1852, the motion for leave to bring in a Militia bill, as proposed by Lord John Russell, was amended on division. The ministers resigned, and a bill was afterwards brought in by the new administration, in conformity with the amended order.<sup>4</sup> A bill has been ordered as an amendment to a question for a resolution of the house;<sup>5</sup> and on the 17th April, 1834, a bill to admit dissenters to the Universities was ordered, as an amendment to a question for an address to the Crown for that purpose.<sup>6</sup> In 1869, a bill for the disfranchisement of freemen in the City of Dublin was ordered as an amendment to a question for the issue of a new writ.<sup>7</sup>

In various cases, proceedings preparatory to the bringing in of bills first occupy the attention of the house. Sometimes resolutions have been agreed to by the house, and bills immediately ordered, as in the cases of the Liverpool Elections Bill in 1831 : <sup>8</sup> at other times, resolutions of the house in a former session have been read, and bills ordered thereon.<sup>9</sup> On the 5th March, 1811, resolutions of a former session, relating to the slave trade, were read, and a bill ordered *nem. con.*<sup>10</sup> In 1833, the introduction of the bill for the abolition of slavery was preceded by several resolutions.<sup>11</sup> The Regency Bills of 1789 and 1811 were founded upon resolutions which had been reported from a committee of the whole house, communicated to the House of Lords, agreed to by them, and afterwards presented by both houses to the Prince of Wales and the Queen.<sup>12</sup> On other special occasions, resolutions agreed to by both houses at a conference have preceded the introduction of a bill.<sup>13</sup> It has not been uncommon, also, to read parts of speeches from the throne, messages from the sovereign, Acts of Parliament, entries in the Journal, reports of committees, or

Preliminaries.

<sup>1</sup> 129 C. J. 114; 138 ib. 131; 140 ib. 363; 145 ib. 260.

<sup>2</sup> Church Rates, 1853, 108 C. J. 516; County Franchise, 1861, 116 ib. 65; Protection of Person and Property (Ireland), 1881, 136 ib. 49; Established Church (Wales), 1909, 164 ib. 115. An amendment to postpone procedure on the motion to that day six months is out of order, 151 H. D. 3 s. 1242.

<sup>3</sup> 70 C. J. 62; 71 ib. 430; 106 ib. 205.

<sup>4</sup> 107 C. J. 68. 131.

<sup>5</sup> 81 C. J. 61.

<sup>6</sup> 89 C. J. 191; 22 H. D. 3 s. 900.

<sup>7</sup> 124 C. J. 256.

<sup>8</sup> 86 C. J. 821.

<sup>9</sup> 62 C. J. 588; 75 ib. 65; 82 ib. 442.

<sup>10</sup> 66 C. J. 148.

<sup>11</sup> 88 C. J. 482.

<sup>12</sup> 27 Parl. Hist. 1122; 18 H. D. 1 s. 478, &c.; May, Const. Hist. i. 125, *et seq.*

<sup>13</sup> Slave Trade, 1806, 61 C. J. 393. 401.

other documents in possession of the house, as grounds for legislation, before the motion is made for leave to bring in a bill.<sup>1</sup> On the 30th April, 1868, a question, that the oath taken by Roman Catholic members previous to the alteration of their oath in 1866 be read by the Clerk at the table, was negatived.<sup>2</sup>

Bills originating in committee.  
Imposing charges.

The most frequent preliminary to the introduction of bills is the report of resolutions from a committee of the whole house, in conformity with the standing orders regarding charges upon the people<sup>3</sup> (see p. 458). The chairman is sometimes directed by the committee to move the house for leave to bring in a bill or bills; and sometimes the resolutions are simply reported, and after being agreed to by the house, a bill is ordered thereon; or upon some only;<sup>4</sup> or a bill upon some of the resolutions, and other bills upon other resolutions.<sup>5</sup> Sometimes several resolutions have been reported and agreed to, and another resolution directing the chairman to move for a bill pursuant to the said resolutions, has been reported separately, on which the chairman immediately proceeded to move for a bill.<sup>6</sup> These resolutions have also been again read and a second bill ordered thereon (see p. 497).

Other bills.

In other cases, it has been deemed advisable, for particular reasons, to initiate legislation by preliminary discussion in committee, as in 1856, on the subject of education,<sup>7</sup> in 1858, on the government of India,<sup>8</sup> and in 1910, on the relations between the two houses and the duration of parliament.<sup>9</sup> In 1867, it was proposed to found the Representation of the People Bill upon resolutions to be previously discussed in committee: but ultimately the bill was brought in without any preliminary proceedings.<sup>10</sup> As the house may refer any matters whatever to the consideration of a committee, this course is not inconsistent with any parliamentary principle: but it is open to these objections,—that it involves a double discussion of the same questions in committee, and that it reverses the accustomed order of proceeding, by giving precedence to the consideration of the details

<sup>1</sup> 82 C. J. 442; 91 ib. 639; 95 ib. 470; 107 ib. 186; 123 ib. 113; 131 ib. 47.

<sup>2</sup> 123 C. J. 148, 191 H. D. 3 s. 1582.

<sup>3</sup> The standing orders which required that bills relating to religion and trade should originate in a committee of the whole house were repealed, 29th Feb. 1888, 143 C. J. 75. The resolution of session 1771 (33 ib. 417), which required that legislation for the infliction of capital punishment should originate in com-

mittee, is obsolete, 162 H. D. 3 s. 201.

<sup>4</sup> 81 C. J. 44; 123 ib. 160, 176; 144 ib. 115, 385; 145 ib. 198, 263.

<sup>5</sup> 80 C. J. 471; 103 ib. 981; 128 ib. 249.

<sup>6</sup> 113 C. J. 235.

<sup>7</sup> 111 C. J. 87.

<sup>8</sup> 113 C. J. 135, 235, 149 H. D. 3 s. 853, 1654.

<sup>9</sup> 165 C. J. 71, 95.

<sup>10</sup> 185 H. D. 3 s. 214, 1203.

of a measure, instead of to the principle. When a bill stands for second reading, it is out of order to propose resolutions in a committee, having the same legislative objects, until the order for the second reading of the bill is discharged.<sup>1</sup>

In preparing bills, care must be taken that they do not contain provisions which are not authorized by the order of leave, or by the resolutions upon which the bill was ordered to be brought in, when it is founded upon resolutions reported from a committee of the whole house, that the prefatory paragraph prefixed to a bill which defines the object thereof, known as the title of a bill, corresponds with the order of leave,<sup>2</sup> and that the bill itself is prepared pursuant to the order of leave,<sup>3</sup> or resolutions,<sup>4</sup> and in proper form. Where a bill has been presented without an order of leave the same precautions must be observed, regard being had to the terms of the notice of presentation.<sup>5</sup> If it should appear that these rules have not been observed, the house will order it to be withdrawn.<sup>6</sup>

Such objections, however, should be taken before the second reading; for it is not the practice to order bills to be withdrawn, after they are committed,<sup>7</sup> on account of any irregularity which can be cured while the bill is in committee,<sup>8</sup> or on recommittal.

A bill for the introduction of which leave has been obtained on motion may be presented during the same sitting as that in which it is ordered, or at a subsequent sitting, whilst the house is not engaged in the transaction of business. It is presented by one of the members who were ordered to prepare and bring it in.<sup>9</sup> The member who has obtained leave for a bill, should take the draft to the Public Bill Office for inspection and transmission to the printer. The member obtains from the Public Bill Office the form for the

Preparation of bills.

Presentation of bills upon order.

<sup>1</sup> 149 H. D. 3 s. 1595.

<sup>2</sup> 102 C. J. 832; 103 ib. 522.

<sup>3</sup> Poor Removal (Ireland) Bill, 138 C. J. 161. Speaker's ruling, Registration of Electors Bill, 10 Parl. Deb. 4 s. 938.

<sup>4</sup> 24 Parl. Deb. 4 s. 1201; 63 H. C. Deb. 5 s. 1569.

<sup>5</sup> House Letting (Scotland) Bill and Coal Mines (Checkweighers) Bill, 163 C. J. 188. 225, 188 Parl. Deb. 4 s. 1439, 189 ib. 1437. The title of a bill as presented must not contain any alterations not covered by the notice on the paper, 9 H. C. Deb. 5 s. 2313.

<sup>6</sup> 80 C. J. 329; 82 ib. 325; 84 ib. 261; 92 ib. 254. A clause relating to the quali-

fication of members having been embodied in a bill for regulating expenses at elections, the bill was consequently withdrawn by order, 90 ib. 411.

<sup>7</sup> Objection being taken after report and recommitment of the Income Tax and Inhabited House Duties Bill, 1871, that the bill comprised provisions beyond the order of leave, and that the second reading had been agreed to under a misapprehension of its contents, the bill was withdrawn, 9th and 11th May, 1871, 206 H. D. 3 s. 631.

<sup>8</sup> 71 H. D. 3 s. 403; 27 Parl. Deb. 4 s. 1091-6; 32 H. C. Deb. 5 s. 215.

<sup>9</sup> 33 C. J. 255.

presentation of the bill to the house. To present a bill, in pursuance of the order of the 10th December, 1692,<sup>1</sup> he goes from his place to the bar. The Speaker thereupon calls upon him by name: he answers, "a bill, sir;" and the Speaker desires him to "bring it up;" upon which he carries the bill to the table, and delivers it to the Clerk of the house, who reads the short title aloud; when the bill is said to have been "received by the house."<sup>2</sup>

First  
reading  
and  
printing.

S. O. 31,  
Appendix  
I.

After a bill has been received in either house, a question is put, "That the bill be now read the first time," which is rarely opposed, either in the Lords or Commons;<sup>3</sup> and in the Commons can only be opposed by vote which may be carried to a division, as, under standing order No. 31, when a bill is presented, or is brought from the Lords, the questions, that the bill be read the first time, and that the bill be printed, are to be decided without amendment or debate.

Printing  
of bills  
presented  
without  
an order  
of the  
house.  
S. O. 31,  
(2) Appen-  
dix I.

First  
reading of  
bills  
brought  
from the  
Lords.

A member who has given notice of his intention to present a bill without moving for leave for its introduction, on being called by the Speaker,<sup>4</sup> carries the form obtained for the purpose from the Public Bill Office to the table without first going to the bar. The short title of the bill is read aloud by the clerk at the table. The bill is then deemed to have been read the first time and is to be printed.<sup>5</sup>

Bills sent from the House of Lords to the Commons are read the first time, and a day is fixed for the second reading, upon motion made without notice either before the commencement or after the close of public business (see p. 219). This motion is one of those formal motions for the transaction of business which, by usage, are not opposed, and are made, without objection, during the time of unopposed business (see p. 199). Opposition to the first reading of a Lords' bill is regulated by standing order No. 31.

<sup>1</sup> 10 C. J. 740.

<sup>2</sup> See 1 C. J. 223.

<sup>3</sup> Lords' standing order No. 37; 136 C. J. 100 (Bill read the first time on division).

<sup>4</sup> In the case of two bills to prescribe the manner in which the remaining stages of certain bills should be disposed of in the House of Commons the Speaker declined to call upon the members to present their bills, as the subject matter of the bills should be dealt with by resolution or standing order and not by bill. 190 Parl. Deb. 4 s. 879. The Speaker also declined to call on a member to present a

bill the object of which was to provide that the government should introduce legislation on a particular subject in a certain way, 60 H. C. Deb. 5 s. 1198. A bill has also been refused by the Speaker on the ground that it was governed by a bill, the second reading of which had been negatived, 38 H. C. Deb. 5 s. 1754.

<sup>5</sup> As a question is not put upon the first reading of a bill presented without moving for leave, the house has not any power to object to its presentation, 171 Parl. Deb. 4 s. 1525; 32 H. C. Deb. 5 s. 2706; 60 ib. 1198; 84 ib. 1696.

It is to be observed that when the question for the first reading of a bill is negatived, the house merely determines that the bill shall not now be read; and the question may therefore be repeated on a future day.<sup>1</sup>

Effect of negative vote on first reading.

As soon as the house has ordered a bill to be now read the first (second or third) time, its short title as entered upon the notice paper and endorsed on the bill,<sup>2</sup> is read or supposed to be read by the clerk. This is taken to be a sufficient compliance with the order of the house, and attempts to obtain that a bill should be read to the house clause by clause, have been overruled by the Speaker.<sup>3</sup> It was formerly the practice for the Clerk, on the first reading, to read to the house, first, the title, and then the bill itself; after which the Speaker read the title, and opened to the house the effect and substance of the bill, either from memory or by reading his breviato, which was filed to the bill;<sup>4</sup> and sometimes he even read the bill itself.<sup>5</sup> The practice of affixing a breviato or brief to every bill, prevailed during the greater part of the seventeenth century;<sup>6</sup> and at present a member bringing in a bill may prepare a memorandum explanatory of the contents and objects of the bill, but containing nothing of an argumentative character, which, when revised in the Public Bill Office, will be printed and circulated with the bill.<sup>7</sup>

How bills are read.

When the bill has been read the first time, the question next put in the Commons is, "That the bill be now read a second time." The second reading, however, is not usually taken at that time,<sup>8</sup> and a future day is named, on which the bill is ordered to be read a second time.<sup>9</sup> The bill is then ordered to be printed, in order that its contents may be published and distributed to every member before the second reading.<sup>10</sup> Unreasonable delay ought not to be allowed in

Second reading appointed.

<sup>1</sup> The County Elections Bill, 1852, was twice negatived, 107 C. J. 174. 201, Notices of Motions, sess. 1852, p. 396.

<sup>2</sup> This short title is altered during the passage of the bill if amendments made to the bill render that course desirable, 111 C. J. 309; 112 ib. 382; 116 ib. 373; 135 ib. 48. 360. 398.

<sup>3</sup> 178 H. D. 3 s. 181; 192 ib. 322.

<sup>4</sup> 1 C. J. 380. 456.

<sup>5</sup> Order and Course of Passing Bills in Parliament, 4to. 1641; 1 C. J. 298.

<sup>6</sup> 6 C. J. 570.

<sup>7</sup> Mr. Speaker's instruction to the Public Bill Office, 9th March, 1882; 260 H. D. 3 s. 423; 289 ib. 1513.

<sup>8</sup> For occasions on which the second reading of a bill has been taken immediately after its first reading, see 169 C. J. 450; 170 ib. 80. 173.

<sup>9</sup> An amendment, proposing to add "upon this day six months" to this question, is out of order, 279 H. D. 3 s. 519.

<sup>10</sup> Copies of indemnity bills, in accordance with a resolution of the house, are not circulated, but are obtainable by members, 118 C. J. 134. Consolidated Fund Bills which were included in the same resolution have been circulated to members since 1910.

the printing of a bill after its introduction ; <sup>1</sup> though the fact that the bill remains unprinted does not justify a motion that the order for the second reading be read and discharged.<sup>2</sup> If a bill has not been printed when it is called on for second reading, the postponement of the bill is the usual course ; though, as no rule forbids the second reading of an unprinted bill, a member is in order in moving its second reading ; and it is for the house to determine whether, under the circumstances, the bill should be read a second time.<sup>3</sup> In the Lords the questions for the printing and second reading of a bill on a future day are rarely put, but are entered in the minutes upon an intimation from the peer who has charge of the bill.

Alterations in a bill.

After a bill has been presented and read the first time, it is not regular to make any other than clerical alterations in it.<sup>4</sup> On the 28th March, 1873, notice being taken that the University Tests (Dublin) Bill had been materially altered since the first reading, the Speaker ruled that after the first reading a bill was no longer the property of the member himself but passed into the possession of the house. The order for the second reading was accordingly discharged and the bill withdrawn.<sup>5</sup>

Bills relating to the same subject.

There is no rule or custom which restrains the introduction of two or more bills relating to the same subject, and containing similar provisions.<sup>6</sup>

Procedure on a hybrid bill. S. O. 200A. (Private Bills).

If it appears, after its introduction, that a public bill may affect private rights, notice of this circumstance is sent from the Public Bill Office to the member in charge of the bill ; and the examiners of petitions for private bills are ordered to examine the bill with respect to compliance with the standing orders relative to private bills : but the reference to the examiners does not affect the order for the second reading of the bill, which remains upon the notice paper, though the second reading cannot be moved until the examiners have reported on the bill.<sup>7</sup>

Procedure on bills to which private bill standing orders apply.

If the examiners find that standing orders relative to private bills are applicable and have been complied with, or if when not so complied with, the select committee on standing orders (see p. 633) report that the standing orders should be dispensed with, the bill is

<sup>1</sup> 216 H. D. 3 s. 276 ; 235 ib. 1429 ; 240 ib. 859.

<sup>2</sup> 279 H. D. 3 s. 879.

<sup>3</sup> 239 H. D. 3 s. 609 ; 256 ib. 776 ; 277 ib. 510 ; 289 ib. 1834 ; 2 Parl. Deb. 4 s. 376. 385 ; 4 H. C. Deb. 5 s. 447 ; 24 ib.

<sup>4</sup> 108 H. D. 3 s. 969.

<sup>5</sup> 215 H. D. 3 s. 303. 305.

<sup>6</sup> 268 H. D. 3 s. 1656 ; 278 ib. 92.

<sup>7</sup> 306 H. D. 3 s. 425.



proceeded with as a "hybrid" or "quasi-private" bill. That is to say, after being read a second time it is committed to a select committee, nominated partly by the house and partly by the committee of selection;<sup>1</sup> and the committee may be empowered to hear suitors, their agents and counsel, for and against the bill.<sup>2</sup> The bill, when reported from the select committee, is recommitted to a committee of the whole house, and is subsequently treated as a public bill.<sup>3</sup>

If, however, the examiner reports that none of the standing orders relative to private bills are applicable to the bill, it proceeds on its course as an ordinary public bill; but the house has sometimes committed such bills<sup>4</sup> and bills which have not been referred to the examiners<sup>5</sup> to a committee of the character described in the preceding paragraph. Bills to which standing orders do not apply.

If the examiner of petitions for private bills reports that the standing orders applicable to the bill have not been complied with, and the select committee on standing orders report that compliance therewith ought not to be dispensed with, the order of the day for the second reading of the bill is read and discharged, and the bill is withdrawn.<sup>6</sup> Bills in case of which standing orders are not complied with.

It may become necessary, before the second reading of a bill,<sup>7</sup> to make considerable changes in its provisions, which can only be Bills withdrawn and other bills presented.

<sup>1</sup> In 1904 the Dean Forest (hybrid) Bill was committed to a select committee of three members nominated by the committee of selection. 159 C. J. 220. Hybrid bills have also been committed to joint committees, the Commons' members being nominated by the committee of selection, London Water Bill, 157 ib. 127; Port of London Bill, 158 ib. 209. In session 1868 the Metropolis Gas (hybrid) Bill was committed to a committee of the whole house, and on being reported with amendments, was recommitted to a specially constituted select committee on certain private bills, 123 ib. 122. 126. 173. Regarding motions to discharge members nominated by the committee of selection, see p. 427.

<sup>2</sup> A select committee on a hybrid bill differs from a select committee on a public bill as it has the same power over the bill as committees on private bills have, and decides the question whether the preamble of the bill is proved before proceeding with the clauses.

<sup>3</sup> Petitions against these bills are presented to the house as public petitions (cf. *infra*, Chapter XXII.), and not deposited in the Committee and Private Bill Office as in the case of private bills (cf. *infra*, p. 671). These "hybrid" bills are subject, as are the petitioners against them, to the payment of fees in respect of a private bill. A clause proposed to be moved on consideration of the Port of London (hybrid) Bill, as amended was ruled out of order on the ground that it affected the property and interests of persons in a way that entitled them to notices under the standing orders relating to private bills, 198 Parl. Deb. 4 s. 610.

<sup>4</sup> Dublin Barracks Bill, 147 C. J. 129. 134.

<sup>5</sup> Cheshire Salt Districts Compensation Bill, 136 C. J. 59; Brine Pumping (Compensation for Subsidence) Bill, 146 ib. 96; Merchant Shipping (Deduction for Propelling Power) Bill, 162 ib. 204.

<sup>6</sup> Military Manœuvres Bill, 155 C. J. 327; Canals Bill, 160 ib. 216.

accomplished, at this stage, by discharging the order for the second reading and withdrawing the bill. If a change of title be necessary, the practice is to order the bill to be withdrawn, and to move subsequently for leave to bring in another bill: but where the bill is withdrawn, for the purpose of making numerous amendments, without any change of title, a simpler form of proceeding is adopted. Upon the withdrawal of the first bill, a motion is made forthwith that leave be given "to *present* another bill instead thereof."<sup>1</sup> A bill has been withdrawn and another bill ordered, after reading the resolution upon which the first bill was founded.<sup>2</sup>

Entry of  
name of  
peer  
moving  
second  
reading.

By standing order No. 37 of the House of Lords, the name of the lord who moves the second reading of any public bill is entered on the journals; and the name of the lord presenting a public bill, and that of the lord who gives notice to the clerk assistant that he intends to move the second reading of a public bill brought up from the Commons (see p. 386) are printed in the minutes of proceedings.<sup>3</sup>

Second  
reading  
moved.

The day having been appointed for the second reading, the bill stands upon the notice paper amongst the other orders of the day and is called on in its proper turn, when that day arrives. The second reading is the most important stage through which the bill is required to pass; for its whole principle is then at issue, and is affirmed or denied by a vote of the house;<sup>4</sup> though it is not regular on this occasion to discuss, in detail, its several clauses,<sup>5</sup> and this principle has been enforced on other stages of a bill.<sup>6</sup> The member who has charge of the bill moves, "That the bill be now read a

<sup>1</sup> 69 C. J. 369; 108 ib. 612; 118 ib. 344. 345, 172 H. D. 3 s. 408; 128 C. J. 120, 215 H. D. 3 s. 303; 134 C. J. 366, 248 H. D. 3 s. 1119; 143 C. J. 94; 144 ib. 407; 146 ib. 266.

<sup>2</sup> 131 C. J. 198. By old parliamentary rule, a bill brought from the other house should not be withdrawn. This rule is still observed in the Lords; not so of late years in the Commons.

<sup>3</sup> A question arose whether the motion for the second reading of the Medical Relief Disqualification Removal Bill should stand in the name of the Earl of Miltown or of the Earl Granville; and on motion, it was agreed that the Earl of Miltown should have precedence, 117 L. J. 414, 300 H. D. 3 s. 27.

<sup>4</sup> Instances of protracted debate on the second reading of bills: 1851, Ecclesias-

tical Titles Assumption Bill, seven sittings; 1881, Land Law (Ireland) Bill, eight sittings; 1884, Representation of the People Bill, six sittings; 1886, Government of Ireland Bill, twelve sittings; 1887, Criminal Law (Amendment) Ireland Bill, seven sittings; 1888, Local Government (England and Wales) Bill, six sittings; 1890, Purchase of Land and Congested Districts (Ireland) Bill, five sittings; 1893, Government of Ireland Bill, twelve sittings.

<sup>5</sup> 223 H. D. 3 s. 35; 237 ib. 1593; see also debate on Expiring Laws Continuance Bill, 321 ib. 38; 113 Parl. Deb. 4 s. 427; 150 ib. 1292; 12 H. C. Deb. 5 s. 423; 65 ib. 1673.

<sup>6</sup> 223 H. D. 3 s. 35; 224 ib. 1297; 225 ib. 684. 1683; 232 ib. 1196; 236 ib. 396.

second time ; " and takes this opportunity of enforcing its merits. Debate on the stages of a bill should be confined thereto, and should not be extended to a criticism of the provisions of other bills then before the house relating to the same subject : but the Speaker remarked, when called upon to enforce this rule, that on many such occasions some licence was conceded to honourable members who addressed the house ; <sup>1</sup> and the rule is occasionally relaxed (see p. 281). The opponents of the bill may vote against the question " That the bill be now read a second time : " <sup>2</sup> but this course is rarely adopted, because it still remains to be decided on what other day it shall be read a second time, or whether it shall be read at all ; and the bill, therefore, is still before the house and may afterwards be proceeded with.<sup>3</sup>

The ordinary practice is to move an amendment to the question, by leaving out the word " now," and adding the words " three months," " six months," or any other term beyond the probable duration of the session. The postponement of a bill, in this manner, is regarded as the most courteous method of dismissing the bill from further consideration, as the house has already ordered that the bill shall be read a second time ; and the amendment, instead of reversing that order, merely appoints a more distant day for the second reading. The acceptance by the house of such an amendment being tantamount to the rejection of the bill, if the session extends beyond the period of postponement, a bill which has been ordered to be read a second time upon that day " three months," is not replaced upon the notice paper of the house.<sup>4</sup> The same form of amendment is adopted when it is desired to postpone the second reading for any shorter time.

It is also competent to a member who desires to place on record any special reasons for not agreeing to the second reading of a bill, to move, as an amendment to the question, a resolution declaratory of some principle adverse to, or differing from, the principles, policy,

Amend-  
ments to  
question  
for second  
reading.

Amend-  
ments in  
the form  
of reso-  
lutions.

<sup>1</sup> 163 H. D. 3 s. 1300.

<sup>2</sup> 97 C. J. 354 ; 99 ib. 486 ; 118 ib. 206. 221. 222. In former times, when the question for now reading a bill a second time has been negatived, it has been followed by an order for reading the bill a second time that day three or six months, 106 ib. 139 ; 107 ib. 267 ; 110 ib. 199.

<sup>3</sup> Parliamentary Electors Bill, 102 C. J. 822. 837. 872. 901 ; Church Rates Com-

mutation Bill, 118 C. J. 206. 222 ; Parochial Boards (Scotland) Bill and Crofters' Holdings (Scotland) Act (1886) Amendment Bill, 143 C. J. 58. 74. 78, 322 H. D. 3 s. 1496 ; Dublin, Wicklow, &c., Railway Bill (on consideration), 142 C. J. 394. 402.

<sup>4</sup> Poor Removal (Ireland) (No. 2) and Beer Adulteration Bills, 137 C. J. 206. 854.

or provisions of the bill;<sup>1</sup> or expressing opinions as to any circumstances connected with its introduction or prosecution;<sup>2</sup> or otherwise opposed to its progress;<sup>3</sup> or seeking further information in relation to the bill by committees,<sup>4</sup> commissioners,<sup>5</sup> the production of papers or other evidence,<sup>6</sup> or, in the Lords, the opinions of the judges.<sup>7</sup> The principle of relevancy in an amendment (see p. 261) governs every such proposed resolution, which must, therefore, "strictly relate to the bill which the house, by its order, has resolved upon considering,"<sup>8</sup> and must not include in its scope other bills then standing for consideration by the house. Nor may such an amendment deal with the provisions of the bill upon which it is moved, nor anticipate amendments thereto which may be moved in committee,<sup>9</sup> nor attach conditions to the second reading of the bill.<sup>10</sup> When such a resolution amounts to no more than a direct negation of the principle of the bill, it is an objectionable form of amendment:<sup>11</sup> but there are special cases for which it may be well adapted. On the 21st February, 1854, an amendment was made to the question for reading the Manchester Education Bill a second time, that

<sup>1</sup> Corn Importation Bill and Property Tax Bill, 97 C. J. 113. 321; Factories Bill, Bank Charter Bill, Sugar Duties Bill and Poor Law Amendment Bill, 99 ib. 265. 396. 421. 468; Lunatics Bill, 100 ib. 721; Representation of the People Bill, 114 ib. 125. In this case, the Speaker stated that in the time of his predecessor between forty and fifty such resolutions had been moved as amendments to stages of bills, 153 H. D. 3 s. 1006; Army Discipline Bill, 134 C. J. 141; Arrears of Rent (Ireland) Bill, 137 ib. 220. 337; Criminal Law Amendment (Ireland) Bill, 142 ib. 162, &c.

<sup>2</sup> Inhabited House Duty Bill, 106 C. J. 321; Conspiracy to Murder Bill, 113 ib. 65; Paper Duty Repeal Bill, third reading, 115 ib. 229; Intoxicating Liquor, &c. (Ireland) Bill, 145 ib. 214; Newfoundland Fisheries Bill, 146 ib. 313, &c.

<sup>3</sup> Australian Colonies Government Bill, 105 C. J. 334; Government of India Bill, 108 ib. 609; Representation of the People Bill, 121 ib. 213; Elementary Education Bill, 131 ib. 262; Valuation of Property Bill, 132 ib. 86; Customs and Inland Revenue Bill, 133 ib. 182, &c.

<sup>4</sup> 82 L. J. 284; 83 ib. 201; 85 ib. 279; 88 ib. 337; 95 C. J. 476; 98 ib. 354. 398; 99 ib. 31; 104 ib. 384; 105 ib. 139; 110

ib. 238; 125 ib. 90.

<sup>5</sup> 95 C. J. 469 (Amendment for an address); 100 ib. 719.

<sup>6</sup> 88 L. J. 543; 102 C. J. 865; 106 ib. 382; 107 ib. 186; 137 ib. 77.

<sup>7</sup> Bank Charter Bill, 1833, 65 L. J. 613.

<sup>8</sup> Report on Public and Private Business, Parl. Pap. (H. C.) sess. 1837, No. 517, p. 5; 143 H. D. 3 s. 643; 269 ib. 261; 86 Parl. Deb. 4 s. 506. When an amendment to the second reading of a bill has been of a very specific kind, the Speaker has confined the debate to the issue raised by the amendment until the amendment has been disposed of, 40 Parl. Deb. 4 s. 473; 70 ib. 993.

<sup>9</sup> 192 H. D. 3 s. 1571; 145 Parl. Deb. 4 s. 1149; 188 ib. 76. A resolution proposed upon the second reading of the Roads and Bridges (Scotland) Bill, in session 1873, that the house declines to entertain *any* legislation involving the compulsory imposition of local burthens, &c., was held to affect other bills, as well as that under consideration, and was therefore restricted to that bill only, 128 C. J. 270.

<sup>10</sup> Anglo-German Agreement Bill, 347 H. D. 3 s. 743.

<sup>11</sup> Jewish Disabilities Bill, 103 C. J. 414.

"education to be supported by public rates, is a subject which ought not, at the present time, to be dealt with by any *private* bill," which gave legitimate expression to the opinion of the house.<sup>1</sup> Amendments, however, to the question for the second reading of a private bill, which seek to substitute for that question a resolution declaring the opinion of the house on a matter of public or general policy, are out of order;<sup>2</sup> but an amendment stating that in view of the policy of Parliament as declared in certain public Acts the house was not prepared to entertain a bill contravening them has been allowed to be moved and was carried.<sup>3</sup>

It must be borne in mind, however, that the resolution, if agreed to, does not arrest the progress of the bill, the second reading of which may be moved on another occasion. The effect of such an amendment is merely to supersede the question for *now* reading the bill a second time; and the bill is left in the same position as if the question for now reading the bill a second time had been simply negatived<sup>4</sup> or superseded by the previous question. The house refuses, on that particular day, to read the bill a second time, and gives its reasons for such refusal: but the bill is not otherwise disposed of.<sup>5</sup> Such being the technical effect of a resolution, so carried, it need scarcely be said that its moral and political results vary according to the character and importance of the resolution itself, the support it has received, and the means there may be of meeting it, in the further progress of the bill. Thus the amendment to the second reading of the Conspiracy to Murder Bill, in 1858, being also a vote of censure, was not only fatal to that measure, but caused the immediate fall of Lord Palmerston's ministry. The amendment to the second reading of the Reform Bill of 1859, was decisive as to that measure, and led to a dissolution. On the 22nd July, 1872, a resolution being carried, on the Thames Embankment (Land) Bill, that, having regard to the advanced period of the session and the pressure of more important business, it was not expedient to proceed further with the consideration of the bill, the bill was necessarily abandoned.<sup>6</sup> Where the

Effect of such a resolution.

<sup>1</sup> 109 C. J. 90.

<sup>2</sup> London and North Western Railway Bill, 1891, 352 H. D. 3 s. 1-3.

<sup>3</sup> St. James's Vestry Hall (Westminster) Bill, 165 C. J. 84.

<sup>4</sup> 244 H. D. 3 s. 1384.

<sup>5</sup> In 1861, the second reading of the Marriage Law Amendment Bill having been superseded by a resolution, the

Speaker, on an appeal from its mover, suggested that the best course would be to withdraw the bill and introduce another in harmony with the expressed opinion of the house, 162 H. D. 3 s. 892.

<sup>6</sup> See also the case of the resolution moved on consideration of the East Indian Railways Bill, 134 C. J. 308.

resolution relates to a matter which is incidental to the legislation intended by the bill, such a resolution does not arrest its progress, provided the principle affirmed can be considered at a further stage. Thus, on the 6th May, 1872, on going into committee upon the Education (Scotland) Bill, a resolution was carried, affirming that instruction in the holy scriptures was an essential part of education and ought to be provided for in the bill. To give effect to this resolution, an amendment was moved in committee; the amendment was negatived; and thus the resolution of the house was practically reversed,—a proceeding, however, in strict conformity with parliamentary usage.<sup>1</sup> In the Lords, resolutions relating to a bill have been moved separately, before the order of the day, and not by way of amendment,<sup>2</sup>—a course which would be incompatible with the rules of the House of Commons.

Previous question.

Sometimes the previous question is moved on the second reading of a bill (see p. 252); though the use of that form is open to the same objection as a simple negative of the second reading, as the bill is not disposed of, but may be appointed to be read on another day.

Bills dropped.

It may here be stated, that if, when the order of the day is read at the table, no motion be made for the second reading or other stage of a bill, or for its postponement, it becomes a dropped order, and does not appear again upon the notice paper, unless another day be appointed for its consideration (see p. 234).

Proceedings on bill null and void.

If a bill has been read a second time by mistake or inadvertence, the proceedings have been declared null and void, and another day has been appointed for the second reading.<sup>3</sup>

Bills rejected.

A motion that a bill be rejected, formerly not uncommon, is not consonant with established practice.<sup>4</sup> In more ancient times bills were treated with even greater ignominy. On the 23rd January, 1563, a bill was rejected and ordered to be torn; so, also, on the 17th March, 1620, Sir Edward Coke moved "to have the bill torn in the house;" and it is entered that the bill was accordingly "rejected and torn, without one negative."<sup>5</sup> Even so late as the 3rd June, 1772, the Lords having amended a money clause in the Corn Bill, Governor Pownall moved that the bill be rejected, which motion being seconded, the Speaker said "that he would do his part of the

<sup>1</sup> 127 C. J. 181. 239.

<sup>2</sup> 103 L. J. 609; 105 ib. 284, 215 H. D. 3 s. 1396.

<sup>3</sup> 114 C. J. 139, 153 H. D. 3 s. 816; 151 C. J. 134; 170 ib. 271, 75 H. C. Deb. 5

s. 46. Committal of a bill to a standing committee, 148 C. J. 244. 249. 252. See also pp. 542. 646.

<sup>4</sup> 37 C. J. 444; 80 ib. 425.

<sup>5</sup> 1 C. J. 63. 252. 311. 560.

business, and toss the bill over the table." The bill was rejected, and the Speaker, according to his promise, throw it over the table, "several members on both sides of the question kicking it as they went out."<sup>1</sup>

The second reading is the stage at which counsel have been heard, when the house has been of opinion that a public bill was of so peculiar a character as to justify the hearing of parties whose interests, as distinct from the general interests of the country, were directly affected by it.<sup>2</sup> It is a general principle of legislation that a public bill, being of national interest, should be debated in Parliament upon the grounds of public expediency; and that the arguments on either side should be restricted to members of the house, while peculiar interests are represented by the petitions of the parties concerned. Questions of public policy can only be discussed by members: but where protection is sought for the rights and interests of public bodies, or others, it has not been unusual to permit the parties to represent their claims, either in person or by counsel. Counsel have also been heard at various other stages of bills, as well as on the second reading. In the case of bills of pains and penalties, disabilities, or disfranchisement, it has been usual to order a copy of the bill, and the order for the second reading, to be served upon the parties affected, and to hear them by counsel.<sup>3</sup> The attorney-general has also been ordered to appoint counsel to manage the evidence, at the bar of the house, in support of the bill,<sup>4</sup> or to take care that evidence be produced in support of the bill.<sup>5</sup>

When a bill has been read a second time in the Lords, a question is put, "That this bill be committed," and when this motion has been agreed to, a day is named for the committee. If a peer desires that the bill shall be committed to a select committee, he makes a motion to

Counsel  
ordered.

Commit-  
tal of  
bills.  
Lords.

<sup>1</sup> 17 Parl. Hist. 512-515.

<sup>2</sup> Cotton Factories Bill, 1818, 51 L. J. 662; Mr. Buckingham's Compensation Bill, 1835, 90 C. J. 589; Municipal Corporations Bill (Lords), 1833; Warwick Borough Bill (Lords), 1834, 66 L. J. 202, &c.; Stafford Disfranchisement Bill (Lords), 1836; Canada Government Bill (Commons), 1838, Mr. Roebuck, 93 C. J. 233; Jamaica Bill (Commons), 22nd and 23rd April, and 7th June, 1839, and (Lords), 28th June, 71 L. J. 446, 94 C. J. 208, 213, 318; Ecclesiastical Duties and Revenues Bill (Lords), 1840, 72 L. J. 545, 551; Sudbury Disfranchisement Bill (Lords), 1844, 76 L. J. 560; Newfound-

land Fisheries Bill, 1891, 123 L. J. 158, 146 C. J. 308, 313, 352 H. D. 3 s. 1131. For explanations of the principle upon which Parliament has permitted counsel to be heard against public bills and precedents cited, see Lords' Debate on Australian Colonies Bill, 10th June, 1850, 111 H. D. 3 s. 943.

<sup>3</sup> Wilson's Disabilities Bill, 1737, 22 C. J. 889; Rumbold's Pains and Penalties Bill, 1782, 38 ib. 982; The Queen's Degradation Bill, 1820, 53 L. J. 282.

<sup>4</sup> 22 C. J. 887; 38 ib. 1004.

<sup>5</sup> O'Sullivan's Disabilities Bill, 124 C. J. 180.



that effect as soon as the bill has been read a second time.<sup>1</sup> When such a motion has been negatived or withdrawn, the bill stands committed to a committee of the whole house, and the peer having charge of the bill names a day for the committee stage.

**Commons.** The committal of a bill after it had been read a second time in the House of Commons was secured until 1907 by practically the same procedure as that described in connection with the House of Lords.<sup>2</sup> In that year, however, the House ordered that when a public bill, other than a bill for imposing taxes or a Consolidated Fund or appropriation bill, or a bill for confirming provisional orders, had been read a second time, it should stand committed to a standing committee (see p. 416), unless the house should, on motion to be decided without amendment or debate, otherwise order. Such a motion does not require notice, must be made immediately after the bill has been read a second time, may be made by any member and may be decided, though opposed, after the expiration of the time for opposed business.<sup>3</sup> Accordingly, as soon as a bill has been read a second time, a motion may be made "That the bill be committed to a committee of the whole house," or "That the bill be committed to a select committee"<sup>4</sup>

<sup>1</sup> 129 L. J. 33; 130 ib. 80; 131 ib. 117. A bill has been committed to the select committee on another bill, 84 L. J. 172; 92 ib. 70. This motion can be made in the Lords at any stage between second and third reading. For the case of a bill committed to a select committee after the motion for its third reading had been made, see London Bridge Bill, 111 L. J. 273. A bill has been committed to a "private" committee of the Lords present this day, 66 L. J. 159. 583.

<sup>2</sup> As soon as a bill had been read a second time a motion could be made for the committal of the bill to one of the standing committees (see p. 416) or to a select committee, and this motion was open to amendment by inserting a select committee for a standing committee or *vice versa*, or by substituting the name of one standing committee for that of the other, 151 C. J. 265; 159 ib. 56. 126; 161 ib. 42. If such a motion were not made or, when made, were negatived or withdrawn, the bill stood committed to a committee of the whole house, 150 C. J. 90, 31 Parl. Deb. 4 s. 1140; 32 Parl. Deb. 4 s. 1488; 151 C. J. 265. For cases in which the order for the committal of a bill

to a committee of the whole house was read and discharged and the bill was committed to a standing or select committee, see 110 C. J. 143; 111 ib. 207; 112 ib. 337; 119 ib. 256; 148 ib. 116. 417; 150 ib. 86; 152 ib. 222; 153 ib. 247; 156 ib. 266; 159 ib. 222. Such a motion has been made although the bill was under consideration by a committee of the whole house, 10 ib. 399. 400; 136 ib. 154. 236, 261 H. D. 3 s. 502; 147 C. J. 154. 221. 225. 264. Similarly the order for committee of the whole house on a bill was read and discharged without notice, and the house resolved that it was expedient to commit the bill to a joint committee, 149 C. J. 66.

<sup>3</sup> Such a motion has been made after a quarter-past eight o'clock when private business was set down for that hour by direction of the chairman of ways and means, 3 H. C. Deb. 5 s. 417.

<sup>4</sup> Bills are sometimes committed to a select committee to which other bills have been committed, 106 C. J. 243; 116 ib. 146; 120 ib. 65; 129 ib. 151; 133 ib. 61. 222. &c.; or to select committees appointed to inquire into another matter (see p. 424).



(see p. 424). Only one of these motions may be made,<sup>1</sup> and if it is negatived, the bill stands committed to a standing committee. The standing order provides also for the committal of a bill in respect of some of its provisions to a standing committee and in respect of its other provisions to a committee of the whole house.

Bills which relate exclusively to Scotland,<sup>2</sup> if committed to a standing committee, are considered by the standing committee for Scottish bills (see p. 417), while other bills are distributed among the three other standing committees by the Speaker, who changes his allocation of them from time to time if occasion should arise.<sup>3</sup>

If it should be desired that a bill which stands committed to a standing committee should be considered in committee of the whole house or by a select committee a motion is made for discharging the former committal of the bill and for committing the bill to a committee of the whole house<sup>4</sup> or a select committee,<sup>5</sup> as the case may be. Motions for the committal of a bill to a committee other than that first ordered by the house would not be subject to the conditions placed by standing order No. 46 (1) upon the original motion, but debate thereon would be restricted to the effect or expediency of the reference of the bill to the proposed committee, and general debate upon the merits or clauses of the bill would not be permitted.<sup>6</sup> An amendment to add "upon this day six months" at the end of such a motion would be out of order.<sup>7</sup>

Notices of amendments to a bill in committee are not received at the table, until the bill has been read a second time.

On the order of the day being read for the committee, it is moved in the Lords, "That the House do now resolve itself into a Committee upon the Bill," to which an amendment may be moved, that the house be put into committee on a future day, beyond the probable duration of the session<sup>8</sup> or that the bill be committed to a select committee;<sup>9</sup> but in the Commons, the Speaker leaves the chair forthwith, pursuant to standing order No. 51 (see p. 199), unless a member rises to move an instruction which stands upon the notice paper. When the order of the day for committee

<sup>1</sup> 61 H. C. Deb. 5 s. 2079.

<sup>2</sup> The Speaker determines whether a bill relates exclusively to Scotland, 173 Parl. Deb. 4 s. 1190; 62 H. C. Deb. 5 s. 1467.

<sup>3</sup> 163 C. J. 414.

<sup>4</sup> 169 C. J. 159.

<sup>5</sup> 164 C. J. 179.

<sup>6</sup> 278 H. D. 3 s. 333. 335. 341; 287 ib. 1870; 4 Parl. Deb. 4 s. 305. 1310.

<sup>7</sup> 278 H. D. 3 s. 394.

<sup>8</sup> 111 L. J. 303.

<sup>9</sup> 128 L. J. 155. The order for committee has also been read and discharged and the bill committed to a select committee, 130 L. J. 80.

Distribution of bills committed to standing committees. S. O. 47, Appendix I.

Transfer of bills from standing committees to committee of whole house, &c.

Notice of amendments.

Going into committee on a bill.

Lords.

Commons.

S. O. 51, Appendix I.

on a bill is read, the member in charge thereof can move that the order be discharged, and the bill referred to a standing or select committee.<sup>1</sup> If that motion is moved by another member, the member in charge of the bill, if he objects to that course, can express his desire that the Speaker should leave the chair, which the Speaker would do forthwith, pursuant to standing order No. 51.

Commit-  
tee stage  
passed  
over.

The Lords occasionally, as in the case of Consolidated Fund bills, when the bill has been read a second time, negative the committee stage, and proceed at once to the third reading. Numerous instances of this practice are to be found upon the journals of the House of Commons, until the year 1786, in the case of urgent bills, acts of grace and even of taxation bills, when there were no blanks to be filled up, and no amendment was tendered to the bill. The bill recognizing King William and Queen Mary, and for avoiding all questions touching the Acts made in the Parliament assembled at Westminster on the 13th February, 1688, was, perhaps, the most important bill treated in this manner.<sup>2</sup>

Instruc-  
tions to  
commit-  
tees of the  
whole  
house  
on bills;

Before the house resolves itself, for the first time, into a committee of the whole house upon a bill, an instruction may be given to the committee. To explain the principles that govern the proposal of instructions to committees of the whole house, it must be borne in mind that, under the parliamentary usage in force in former times, an amendment might be wholly irrelevant to the motion or bill to which it was proposed (see p. 261), and that consequently clauses might be added to a bill during its progress through the house relating to any matters however various and unconnected, whether with one another or with the bill as originally drawn. A reaction from such laxity of procedure led to the establishment of rules and practice which imposed on the House of Commons an inconvenient rigidity in dealing with a bill. No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, which is prefixed to every bill and describes its object and scope. To obviate the difficulty thus created, the house, in 1854, by standing order No. 34, gave a general instruction to all committees

S. O. 34,  
Appendix  
I.

<sup>1</sup> 163 C. J. 366.

<sup>2</sup> 10 C. J. 373. Naturalization of the Electress Sophia, 1705, 15 ib. 47; Importation of Tobacco, 1728, 21 ib. 284; Proceedings of Courts to be in English, 1732, 22 ib. 81; Recruiting of the Land Forces, 1744, 24 ib. 637; Act of Grace, 1747,

25 ib. 406; South Sea Company Bill, 1760, 28 ib. 983; Justices of the Peace Qualification Bill, 1766, 31 ib. 44; Sinking Fund Bill, 1786, 41 ib. 977.—(Information communicated by the late Sir Archibald Milman.) See also Adjournment of Parliament Bill, 1657, 7 ib. 575.

of the whole house to which bills were committed, which empowered them to make such amendments therein as they should think fit, provided that the amendments were relevant to the subject-matter of the bill; and, if such amendments were not within the title of the bill, the title was to be amended, and reported specially to the house. This general and standing instruction to committees on bills meets all ordinary occasions. Amendments to bills may, however, be offered which might be beyond the scope of the amendments contemplated by standing order No. 34, and which, without a special instruction from the house, could not be considered by the committee.

The subject-matter of a bill, as disclosed by the contents thereof, when read a second time, has, since 1854, formed the order of reference which governs the proceedings of the committee thereon, and accordingly the objects sought by an instruction should be pertinent to the terms of that order; and the amendments, which an instruction proposes to sanction, must be such as would further the general purpose and intention of the house in the appointment of the committee. The object of an instruction is, therefore, to endow a committee with power whereby the committee can perfect and complete the legislation defined by the contents of the bill, or extend the provisions of a bill to cognate objects; and an attempt to engraft novel principles into a bill, which would be irrelevant, foreign, or contradictory to the decision of the house taken on the introduction and second reading of the bill, is not within the due province of an instruction.<sup>1</sup> Accordingly, an instruction can be moved that authorizes the introduction of amendments into a bill which extend its provisions to objects not contained therein, if those objects are relevant to the subject-matter thereof, or which would augment the legislative machinery whereby the bill is to be put into force, as shown by the examples contained in Appendix II., class 1; whilst, on the other hand, no instruction is permissible which is irrelevant, foreign, or contradictory to the contents of the bill, or that seeks the subversion thereof, by substituting another scheme for the mode of operation therein prescribed (see Appendix II., class 3).

An instruction is necessary to enable a committee to divide a bill into two or more bills,<sup>2</sup> to consolidate two bills into one

Object of  
an in-  
struction.

Instruc-  
tion for  
division  
or con-  
solidation

<sup>1</sup> 345 H. D. 3 s. 347; 23 H. C. Deb. 5 s. 1849; 39 ib. 742; 85 ib. 1891; see also the statement of the Speaker regarding instructions in Appendix II.

<sup>2</sup> 73 L. J. 70; 85 ib. 289; 107 C. J.

118; 108 ib. 645; 116 ib. 376 (three bills); 124 ib. 192; 126 ib. 114; 148 ib. 592, 18 Parl. Deb. 4 s. 324; 160 C. J. 333; 164 ib. 103, 3 H. C. Deb. 5 s. 926; 166 C. J. 310; 167 ib. 199. 435. 508; 168 ib.

of bills,  
&c.

bill,<sup>1</sup> or to give priority to the consideration of a portion of a bill, with power to report the same separately to the house.<sup>2</sup>

Instruction to hear counsel.

Instructions have been given to committees of the whole house, on the presentation of a petition, empowering the committee to hear counsel and examine witnesses.<sup>3</sup>

Extension of bill with limited title.

While a committee can without an instruction extend the operation of a bill to Scotland or Ireland, if the bill be not by the title restricted to England, an instruction is required to render applicable to the whole of the United Kingdom the provisions of a bill limited by its title to a part of the United Kingdom, or otherwise to extend the operation of a bill beyond the limits defined in the title<sup>4</sup> (see Appendix II., class 4).

Informal instructions.

A motion for an instruction which seeks to confer upon a committee of the whole house power to make amendments in a bill that is already possessed by the committee, is out of order<sup>5</sup> (see Appendix

214. 218; 171 ib. 75. An instruction to a committee to divide a bill into two or more bills is in order only when the bill is drawn in distinct parts, enabling the committee to deal with them separately, or when the bill naturally falls into separate parts or subjects, 27 Parl. Deb. 4 s. 1028; 40 ib. 1267; 41 ib. 866; 85 ib. 434; 97 ib. 453; 108 ib. 1130; 175 ib. 238; 18 H. C. Deb. 5 s. 211; 27 ib. 1192; 54 ib. 1757. In session 1894 an instruction was moved to the committee on the Finance Bill, by which new rates of estate duty were proposed, to give the committee power to divide the bill into two parts, and in the first place to report the portion relating to Customs and Inland Revenue, 149 C. J. 151; but on the 18th June, 1901, the Speaker ruled out of order an instruction to enable the committee on the Finance Bill to divide the bill into two parts, and place the coal tax in a separate bill, on the ground that the ordinary practice of the house was to treat the Finance Bill, which contained all the taxes to meet the expenditure of the year, as far as taxation was necessary, as one bill with one object, 95 Parl. Deb. 4 s. 755; see p. 517.

<sup>1</sup> 107 C. J. 112; 121 ib. 344, 183 H. D. 3 s. 1319; 124 C. J. 246; 125 ib. 246; 126 ib. 114, 120, 205 H. D. 3 s. 977; 144 C. J. 319, 339. For similar instructions to a standing committee, see 138 C. J. 141; 145 ib. 418; 146 ib. 254; 156 ib. 324; 158 ib. 280.

<sup>2</sup> 146 C. J. 30; 150 ib. 182; 166 ib. 124.

<sup>3</sup> Corn Regulation Bill, 1791, 46 C. J. 466; Sinecure Offices Bill, 1812, 67 ib. 309; Apprentices Bill, 1814, 69 ib. 335; Penryn Bribery Bill, 1819, 74 ib. 441; Silk Trade Bill, 1824, 79 ib. 180; Coventry Magistracy Bill, 1827, 82 ib. 536; East Retford Disfranchisement Bill, 1828, 83 ib. 122; Liverpool Franchise Bill, 1832, Municipal Corporations Bill, 1835, 67 L. J. 329; Gaming Actions Discontinuance Bill, 1844, 78 ib. 550, 553; St. Alban's Disfranchisement Bill, 1851, 84 ib. 101. Motion for hearing the electors of Lancaster before the committee on the Representation of the People Bill, 1867, 122 C. J. 152, 186 H. D. 3 s. 982.

<sup>4</sup> The Chairman, in default of such an instruction, has declined to put the question on an amendment, 68 H. C. Deb. 5 s. 737 and on a new clause, 142 C. J. 333; 68 H. C. Deb. 5 s. 744; or the clause has been withdrawn, 143 C. J. 500. When such a clause was inserted in a bill in committee without an instruction, the Speaker on consideration of the bill, as amended, stated that the proper course would be to recommit the bill, but under the circumstances of the case the bill was allowed to proceed on the understanding that the clause in question would be struck out of the bill, 65 H. C. Deb. 5 s. 1938.

<sup>5</sup> 195 H. D. 3 s. 847; 207 ib. 402; 33 Parl. Deb. 4 s. 539; 95 ib. 755. If such an instruction has been proposed from the chair, on notice taken, the Speaker declines to put the question thereon, 139 C. J. 396.

II., class 2); nor, in the Commons, can an instruction be moved to a committee of the whole house in a form other than the permissive form, namely—"that they have power"—to consider the matter dealt with by the instruction; <sup>1</sup> and this rule applies to instructions to standing <sup>2</sup> or joint committees (see p. 444). No such restriction applies to instructions to select committees (see p. 424) or private bill committees (see p. 647), or to committees of the whole house in the Lords.<sup>3</sup> To these committees a mandatory or imperative instruction, defining the course of action which they must follow, can be given by the house. An instruction to be in order must be drawn in clear and specific terms, so as to direct the committee to the precise object that the member in moving it has in view.<sup>4</sup>

An instruction to make provisions in a bill which would entail a charge upon the people cannot be put from the chair, unless the recommendation of the Crown be given to the instruction (see p. 460).

Instructions involving a public charge.

The powers conferred by an instruction moved when a bill is committed for the first time, continue operative, if occasion should arise for the subsequent recommitment of the bill.<sup>5</sup>

Application of instruction to recommitment bill.

Pursuant to the established practice of the house, a member cannot move more than one instruction to a committee.<sup>6</sup>

Limitation of instructions. Notice of instructions.

Notice is required, not only of an instruction,<sup>7</sup> but of amendments to an instruction, which, if agreed to, would enlarge the scope of the instruction, or convert the same into a novel proposition. Any amendment moved to an instruction must be strictly relevant thereto and must be drawn in such a shape that, if accepted, the question as amended would retain the form and effect of an instruction.<sup>8</sup> Nor, even in the case of an instruction to a committee on a private bill,

<sup>1</sup> 189 H. D. 3 s. 1070; 97 Parl. Deb. 4 s. 453; 134 ib. 451; 139 ib. 1219; 148 ib. 268. See also Colchester, i. 431, Sidmouth, ii. 144.

<sup>2</sup> 172 Parl. Deb. 4 s. 1055; 175 ib. 1711.

<sup>3</sup> 65 L. J. 551; 68 ib. 151; 71 ib. 532.

<sup>4</sup> 41 Parl. Deb. 4 s. 977; 51 ib. 641; 135 ib. 809.

<sup>5</sup> National Education (Ireland) Bill, 1892. Instruction and committee, 15th June; recommitment 16th June; instruction read in committee; 147 C. J. 358. 369.

<sup>6</sup> 39 Parl. Deb. 4 s. 1708; 41 ib. 866.

<sup>7</sup> 175 H. D. 3 s. 1940; 269 ib. 218; 317

ib. 356; 51 Parl. Deb. 4 s. 642, 2 H. C. Deb. 5 s. 286; see also the Speaker's ruling, 16th Feb. 1893, that such notice to be effective must be on the notice paper, 8 Parl. Deb. 4 s. 1684. The Speaker has ruled out of order in a notice of an instruction prefatory words in the nature of a preamble; see Mr. Whittaker's notice of an instruction to the committee on the Licensing Bill as handed in at the table and amended by the Speaker's directions; Notices of Motions, sess. 1904, pp. 1621. 1676.

<sup>8</sup> Mr. Speaker's ruling (private), 21st February, 1893.

can an amendment be proposed, without notice, to alter the form of a permissive instruction which stands upon the notice paper into a mandatory instruction.<sup>1</sup>

**Debate on motion for an instruction.** Debate on a motion for an instruction must be strictly relevant thereto, and must not be directed towards the general objects of the bill to which the instruction relates,<sup>2</sup> or anticipate the discussion of a clause of the bill,<sup>3</sup> and the mover has not the right of reply.<sup>4</sup> Nor can matters already decided during the current session,<sup>5</sup> or appointed for the future consideration of the house,<sup>6</sup> be brought forward by an instruction, in accordance with the general practice of the house regarding motions and debates (see p. 248).

**When instructions can be moved.** An instruction to a committee of the whole house can only be moved when the order of the day for the first sitting of the committee has been read (see p. 363), except an instruction founded on the report of a committee of the whole house, which is given when the resolution as reported from the committee has been agreed to by the house.<sup>7</sup> In the case of bills referred to standing or select committees, an instruction can be moved as soon as the bill has been committed,<sup>8</sup> or subsequently.<sup>9</sup>

**Bill considered in committee.** When the Speaker has left the chair, the mace is removed from the table and the committee begins the consideration of the bill.<sup>10</sup> As its principle has been affirmed at the second reading, the details of the bill are examined in committee, clause by clause and line by line; for which purpose the permission to speak more than once offers great facilities.

**Postponement of preamble.** In the Lords the first proceeding of the committee is to postpone the title, which is there treated as a part of the bill. The preamble is next postponed in a Lords' committee;<sup>11</sup> whilst in the Commons, by standing order No. 35, the preamble stands postponed until after the consideration of the clauses, without question put.<sup>12</sup> This practice

<sup>1</sup> 350 H. D. 3 s. 1825.

<sup>2</sup> 339 H. D. 3 s. 1073; 349 ib. 676; 18 Parl. Deb. 4 s. 1089; 149 ib. 1095; 157 ib. 963. 983; 39 H. C. Deb. 5 s. 730; 44 ib. 1787. 1789. 1798.

<sup>3</sup> 39 H. C. Deb. 5 s. 726. 735.

<sup>4</sup> 186 H. D. 3 s. 1443.

<sup>5</sup> 201 H. D. 3 s. 534; 326 ib. 1440.

<sup>6</sup> 158 H. D. 3 s. 1851.

<sup>7</sup> 105 C. J. 635; Denison, 49.

<sup>8</sup> 145 C. J. 418. 452.

<sup>9</sup> 146 C. J. 192; 156 ib. 324; 158 ib. 119. 280.

<sup>10</sup> Standing order No. 33, which em-

powers the reference of several bills to one committee (114 C. J. 253; 119 ib. 165), has fallen into disuse, owing to the operation of standing order No. 51 (see p. 363).

<sup>11</sup> On the 29th June, 1869, in committee on the Irish Church Bill, a long debate was raised upon the postponement of the preamble, which was, however, agreed to without a division, 197 H. D. 3 s. 689.

<sup>12</sup> An instruction to a committee that they had power to suspend standing order No. 35 has been ruled to be out of order, 12 Parl. Deb. 4 s. 345.

is adopted because the house has already affirmed the principle of the bill on the second reading, and it is therefore the province of the committee to settle the clauses first; and then to consider the preamble in reference to the clauses only. By this rule the preamble is made subordinate to the clauses instead of governing them.

The chairman proceeds to read the number of each clause, which is thus brought under the consideration of the committee; and to call on the members who have given notices of amendments.<sup>1</sup> A <sup>Amend-</sup>ments, <sup>when to</sup> be offered. Upon its being called by the chairman, there being no question before the committee until an amendment has been moved, or the question proposed, "That the clause stand part of the bill."<sup>2</sup> If no amendment be offered to any part of the clause, the chairman at once proposes the question, "That this clause stand part of the bill," and when this has been disposed of proceeds to the next clause: but when an amendment is proposed, he states the line in which the alteration is to be made and puts the question in the ordinary form. Members who are desirous of offering amendments in committee should watch carefully the progress of the bill; for if the committee have amended a later line or words in the same clause, amendments cannot be made in an earlier part of the bill. Whenever several amendments<sup>3</sup> are about to be moved to the same clause, the chairman proposes each of them in such a form as not to exclude any later amendments; and with this view he often proposes only the first words of an earlier amendment;<sup>3</sup> but if an amendment has been proposed from the chair, which, if carried, excludes amendments that other members seek to submit to the committee, the question on that amendment must be put, if the mover insists upon obtaining the decision of the committee thereon<sup>4</sup> (see also p. 262).

When several amendments are offered at the same place in a clause, Amend-ments at same place in bill. it is within the chairman's discretion to decide which amendment he

<sup>1</sup> To avoid the repetition of identical amendments on the notice paper, the names of the members who have handed in an identical amendment are printed together at the head of the amendment. Only six names of members are allowed to be attached to an amendment after its first appearance on the notice paper. This practice cannot be applied to identical notices of a new clause unless they are handed in consecutively, as new clauses are considered in the order in which the

notices of them were handed in. This arrangement, which was begun in connection with the committee stage of the National Insurance Bill in session 1911, has been adopted for the committee and report stages of all public bills and for bills before the standing committees, 27 H. C. Deb. 5 s. 975, 1148.

<sup>2</sup> 184 H. D. 3 s. 536.

<sup>3</sup> 181 H. D. 3 s. 539; 184 ib. 445.

<sup>4</sup> 320 H. D. 3 s. 200.



will receive.<sup>1</sup> An amendment to leave out words in order to insert other words takes precedence of an amendment merely to leave out the words.<sup>2</sup>

Admissible amendments.

Amendments may be made in every part of the bill, whether in the preamble, the clauses,<sup>3</sup> or the schedules; clauses may be omitted, and new clauses and schedules added; though no amendments can be moved to the granting or enacting words of bills for granting aids or supplies to the Crown, or to the enacting words of other bills. Those words are part of the framework of the bill and are never submitted to the committee.<sup>4</sup>

Inadmissible amendments.

An amendment must be coherent, and consistent with the context of the bill; and when a proposed amendment had been so amended as to form an incoherent question, the chairman stated that if no further amendment were proposed, he should proceed with the question which next arose upon the clause.<sup>5</sup> Amendments cannot be moved which are based on schedules or other provisions, the terms of which have not been placed before the committee.<sup>6</sup> Amendments are out of order if they are irrelevant to the bill,<sup>7</sup> or beyond its scope;<sup>8</sup> governed by or dependent upon amendments already negatived;<sup>9</sup> inconsistent with, or contradictory to, the bill as agreed to by the committee;<sup>10</sup> inconsistent with a decision to which the committee has come upon a former amendment;<sup>11</sup> offered at a wrong place in the bill;<sup>12</sup> or tendered to the committee in a spirit of mockery.<sup>13</sup> Amendments have also been ruled out of order on the ground of vagueness<sup>14</sup> or because they were

<sup>1</sup> 47 Parl. Deb. 4 s. 716; 60 ib. 651.

<sup>2</sup> 18 Parl. Deb. 4 s. 1162; 28 H. C. Deb. 5 s. 1912.

<sup>3</sup> The marginal notes or short titles of clauses do not form part of the bill and are not open to amendment, 166 Parl. Deb. 4 s. 1085.

<sup>4</sup> 332 H. D. 3 s. 1010; 339 ib. 218; 80 Parl. Deb. 4 s. 1364; 11 H. C. Deb. 5 s. 2161; 12 ib. 1317; 11 ib. 2518.

<sup>5</sup> 132 C. J. 73.

<sup>6</sup> Tithe Rent-Charge Recovery Bill, 29th Jan. 1891, private ruling; 70 Parl. Deb. 4 s. 449; 112 ib. 204; 7 H. C. Deb. 5 s. 496; 23 ib. 2251.

<sup>7</sup> 111 C. J. 213; 179 H. D. 3 s. 522; 258 ib. 1451; 14 Parl. Deb. 4 s. 918; 41 ib. 12. 1702. 1704; 60 ib. 721; 74 ib. 326; 81 ib. 753. 1035; 114 ib. 913; 116 ib. 1043.

<sup>8</sup> 147 Parl. Deb. 4 s. 311; 158 ib. 355; 41 H. C. Deb. 5 s. 2859; 61 ib. 128; 68

ib. 739. 745; 78 ib. 661.

<sup>9</sup> 167 H. D. 3 s. 112; 211 ib. 137. 2026; 258 ib. 1333; 296 ib. 800; 305 ib. 83; 18 Parl. Deb. 4 s. 955; 20 ib. 228; 42 ib. 319; 74 ib. 851; 111 ib. 962-5; 18 H. C. Deb. 5 s. 647; 31 ib. 1517; 61 ib. 128.

<sup>10</sup> 258 H. D. 3 s. 1239. 1455; 41 Parl. Deb. 4 s. 360; 113 ib. 493; 198 ib. 883; 30 H. C. Deb. 5 s. 449; 44 ib. 2199.

<sup>11</sup> 22 H. C. Deb. 5 s. 1666; 75 ib. 927; 83 ib. 1738.

<sup>12</sup> 57 Parl. Deb. 4 s. 54; 60 ib. 651; 71 ib. 163.

<sup>13</sup> 270 H. D. 3 s. 862; 58 Parl. Deb. 4 s. 461; 19 H. C. Deb. 5 s. 1718; 71 ib. 2172.

<sup>14</sup> 195 Parl. Deb. 4 s. 551; 73 H. C. Deb. 5 s. 558; 75 ib. 887; 78 ib. 235. In the case of a new clause, 53 H. C. Deb. 5 s. 1195.



trifling.<sup>1</sup> The chairman would decline to propose such amendments from the chair.<sup>2</sup> Amendments to a bill proposing that the address or resolution of one House of Parliament should effect the repeal of the bill have been ruled out of order as unconstitutional,<sup>3</sup> while an amendment proposing that a bill relating to England alone should not come into force until a similar bill should have been passed for Scotland has been ruled to be irrelevant.<sup>4</sup> The chairman also, in the case of an amendment offered to a bill that was limited in scope to the repeal of a clause in a statute, ruled that the amendment was out of order, because its object was the continuance and the extension of the clause to be repealed. The chairman stated that, though the committee had full power to amend, even to the extent of nullifying, the provisions of a bill, they could not insert a clause which reversed the principle which the bill, as read a second time, sought to affirm.<sup>5</sup> In the case of a bill to extend a statute to London with certain modifications which were contained in the schedule to the bill, the chairman ruled that any alterations of the principal Act, that were not extensions or adaptations of it, would be beyond the scope of the bill and therefore out of order.<sup>6</sup> He ruled out of order collectively a number of amendments to the schedule on the ground that, taken together, they would not be modifications of the principal Act specially applicable to London.<sup>7</sup>

In like manner, it is not within the scope of a committee on an expiring laws continuance bill to amend the provisions of the Acts proposed to be continued, or to abridge the duration of such provisions;<sup>8</sup> or to make the Acts permanent.<sup>9</sup> An amendment to include in the bill a statute which has already ceased to have effect is also out of order, but an amendment may be moved to continue an Act which is still in force but would cease to have effect if steps were not taken to continue its existence.<sup>10</sup>

An amendment cannot be moved to a statute law revision bill to

<sup>1</sup> 61 H. C. Deb. 5 s. 189.

<sup>2</sup> The chairman has declined to accept an amendment proposed to be moved to an amendment proposed to a proposed amendment to a clause, 127 Parl. Deb. 4 s. 423.

<sup>3</sup> 41 Parl. Deb. 4 s. 361.

<sup>4</sup> 41 Parl. Deb. 4 s. 1702.

<sup>5</sup> 251 H. D. 3 s. 1134; 19 H. C. Deb. 5 s. 2398.

<sup>6</sup> 122 Parl. Deb. 4 s. 1886.

<sup>7</sup> 122 Parl. Deb. 4 s. 1897.

<sup>8</sup> 221 H. D. 3 s. 1018; 193 Parl. Deb. 4 s. 1025. It has been ruled also that the continuance of any particular Act must be discussed on the schedule to the bill when the Act is reached there and not on clauses of the bill, 139 Parl. Deb. 4 s. 1697; 193 ib. 1011; 12 H. C. Deb. 5 s. 425.

<sup>9</sup> 113 Parl. Deb. 4 s. 553.

<sup>10</sup> 167 Parl. Deb. 4 s. 489.

Statute  
law re-  
vision  
bills.

deal with an Act still in force, as such a bill deals solely with statutes no longer in force.<sup>1</sup>

Consolidation bills.

It has been held that a committee on a bill to effect the consolidation of the law on the subject to which the bill relates may, without an instruction, amend the provisions of the statutes which by the bill are to be consolidated and fused together.<sup>2</sup>

Amendments to clauses.

No amendment can properly be proposed to a clause which is irrelevant to the subject-matter of such clause: such an amendment should be moved as a new clause.<sup>3</sup> An amendment which, if it were agreed to, would constitute a negative of the clause is out of order.<sup>4</sup> An amendment may not be proposed to insert words at the commencement of a clause with a view to proposing an alternative scheme to that contained in the clause,<sup>5</sup> or to leave out from the first word to the end of the clause, in order to substitute other words,<sup>6</sup> or to effect a re-drafting of the clause<sup>7</sup>—such amendments being in the nature of a new clause. In such a case the regular course is to negative the question, that the clause stand part of the bill, and to bring up a new clause at the proper time. When an amendment has already been made at the beginning of a clause, and it is afterwards proposed to leave out the remainder of the clause, such an amendment has been held to be regular.<sup>8</sup>

Amendment to leave out a subsection of a clause.

When a clause contains two or more subsections which are not mutually dependent, an amendment to leave out each subsection is in order.<sup>9</sup> When the subsequent subsections are dependent upon or ancillary to the first subsection an amendment to the clause to leave out that subsection is out of order, as the effect of such an amendment being carried would be to destroy the clause. The decision that should be come to, and the discussion that should properly arise, on the question of the clause standing part of the bill, would thus be anticipated.<sup>10</sup> The same principle has been applied to an amendment to leave out the essential words of a subsection.<sup>11</sup>

Amendment ruled out of

If it should appear in the course of discussion that an amendment

<sup>1</sup> 346 H. D. 3 s. 1618.

<sup>2</sup> Procedure in a standing committee on the County Courts Consolidation Bill, 1888, and in a select committee on the Military Lands Consolidation Bill, 1892.

<sup>3</sup> 147 H. D. 3 s. 1190, 1198; 232 ib. 1242; 233 ib. 359; 247 ib. 278.

<sup>4</sup> 72 H. C. Deb. 5 s. 1961; 74 ib. 1648; 82 ib. 473.

<sup>5</sup> 261 H. D. 3 s. 1522; 41 Parl. Deb. 4 s. 873-5; 74 ib. 325; 197 ib. 1106.

<sup>6</sup> 116 H. D. 3 s. 666; 196 ib. 74; 200 ib. 1057. A similar ruling was applied to an amendment to leave out part of the first subsection of a clause in order to insert an alternative scheme, 30 H. C. Deb. 5 s. 1938.

<sup>7</sup> 85 H. C. Deb. 5 s. 2163.

<sup>8</sup> 200 H. D. 3 s. 1057.

<sup>9</sup> 75 H. C. Deb. 5 s. 116; 84 ib. 1954.

<sup>10</sup> 7 H. C. Deb. 5 s. 493; 39 ib. 748; 54 ib. 1757; 61 ib. 34; 75 ib. 105, 200.

<sup>11</sup> 44 H. C. Deb. 5 s. 2652.

which has been allowed to be moved is out of order, the chairman directs the committee's attention to the fact and withdraws the amendment from the consideration of the committee.<sup>1</sup> The discussion of an amendment has shown that the question raised thereby had already been decided by the committee,<sup>2</sup> that it was inconsistent with a previous decision of the committee,<sup>3</sup> was beyond the scope of the bill,<sup>4</sup> or would constitute, if agreed to, a negative of the bill.<sup>5</sup>

order after  
discussion  
begun.

When a clause has been amended, the question put from the chair is, "That this clause, as amended, stand part of the bill;" and no other amendment can be proposed to a clause, after this question has been proposed from the chair.<sup>6</sup> Debate upon this question must be confined to the clause, as amended, and must not extend to a discussion of the circumstances under which particular amendments were made or to a review in detail of the proceedings on the clause.<sup>7</sup> It has been ruled that when the question, "That this clause stand part of the bill," has been proposed from the chair, it cannot be withdrawn, as it necessarily follows upon the consideration of the clause and is not a motion made by any member which he could ask leave to withdraw.<sup>8</sup>

Question  
for clause  
standing  
part of the  
bill.

The committee may divide one clause into two, or decide that the first part of a clause, or the first part of a clause with a schedule, shall be considered as an entire clause.<sup>9</sup>

Division  
of clauses.

No amendment should be admitted which is in the nature of a previous question.<sup>10</sup> Clauses may be postponed, unless they have been already partly considered and amended, in which case it is not regular to postpone them;<sup>11</sup> though if a proposed amendment be withdrawn, the clause may be postponed.<sup>12</sup> A proposal to postpone the only effective clause of a bill until the subordinate clauses have

Postpone-  
ment of  
clauses.

<sup>1</sup> 164 C. J. 473, 11 H. C. Deb. 5 s. 1763; 124 ib. 384.  
<sup>6</sup> 11 ib. 1021, 1069.

<sup>2</sup> 142 C. J. 257.

<sup>3</sup> 151 C. J. 411.

<sup>4</sup> 162 C. J. 348, 178 Parl. Deb. 4 s. 1250; 170 C. J. 307, 76 H. C. Deb. 5 s. 1435. A new clause, 125 C. J. 399; 169 ib. 154, 155, 61 H. C. Deb. 5 s. 1069.

<sup>5</sup> 167 C. J. 540, 48 H. C. Deb. 5 s. 757-773.

<sup>6</sup> 147 H. D. 3 s. 1191.

<sup>7</sup> 12 Parl. Deb. 4 s. 1180; 20 ib. 503, 696.

<sup>8</sup> Hypothec Abolition (Scotland) Bill, 1st April, 1879, private ruling.

<sup>9</sup> 86 C. J. 728; 87 ib. 80; 89 ib. 409;

<sup>10</sup> The amendments moved in committee on the Reform of Parliament (England) Bill in session 1831-2 to a question "that certain words should stand part of the schedule" to leave out all the words after the word "that" in order to insert "the consideration of those words be postponed," 87 C. J. 141, would not be consonant with modern practice.

<sup>11</sup> 207 H. D. 3 s. 722; 111 Parl. Deb. 4 s. 792. A motion to postpone part of a clause is not in order, 97 ib. 453; 139 ib. 1220.

<sup>12</sup> 128 C. J. 340.

been considered has been ruled to be out of order.<sup>1</sup> Upon a question for the postponement of a clause, the debate is limited to the simple question of postponement, and may not be extended to the merits of the bill<sup>2</sup> or the clause.<sup>3</sup> Postponed clauses are considered after the other clauses of the bill have been disposed of, and before any new clauses are brought up. They have also been considered, under special circumstances, after new clauses,<sup>4</sup> or a certain new clause<sup>5</sup> or certain other clauses,<sup>6</sup> or some of the schedules of the bill.<sup>7</sup> When instructions have been given by the house for the purpose, the committee may receive clauses or make provision in the bills committed to them, which they could not otherwise have considered.<sup>8</sup>

Consolidation or division of bills.

When, pursuant to an instruction, two bills are to be consolidated, the preambles of the two bills are severally postponed, and the clauses of each are successively proceeded with.<sup>9</sup> When a bill is to be divided into one or more bills, it is usual to postpone those clauses which are to form a separate bill, and, when they are afterwards considered, to annex to them a preamble, if necessary, enacting words and title.<sup>10</sup> The separate bills are then separately reported.

Proceedings upon blanks.  
S. O. 37.  
Appendix I.

By standing order No. 37, no question is put for the filling up of words printed in italics; and if no alteration has been made in such words, the bill is reported without amendment, unless other amendments have been made. Under the older practice of the house, when a real blank had been left, and it was desired to fill it up with words different from those first proposed, a distinct motion was made upon each proposal, instead of moving an amendment upon that first suggested. The chairman put the question upon each of the motions separately, in the order in which they were made.<sup>11</sup> It

<sup>1</sup> 74 Parl. Deb. 4 s. 325; 139 ib. 1221. See also the refusal of a motion to postpone clause 1 of the Government of Ireland Bill, 1912, 39 H. C. Deb. 5 s. 744. See also 82 ib. 472.

<sup>2</sup> 207 H. D. 3 s. 1378; 318 ib. 145; 41 Parl. Deb. 4 s. 870.

<sup>3</sup> 12 Parl. Deb. 4 s. 350; 111 ib. 48; 135 ib. 812; 136 ib. 504; 162 ib. 1721; 6 H. C. Deb. 5 s. 1376; 81 ib. 1883.

<sup>4</sup> 132 C. J. 235; 142 ib. 206. 210; 148 ib. 455; 161 ib. 407.

<sup>5</sup> 122 C. J. 141. 149; 164 ib. 461.

<sup>6</sup> 122 C. J. 248. 252; 163 ib. 440. 441.

<sup>7</sup> 130 C. J. 425. A clause has been postponed until after the schedule and

any new schedule, and the schedule when reached was postponed until after the postponed clause, Churches (Scotland) Bill, 1905, 160 ib. 334. 335.

<sup>8</sup> The extent to which the rejection of an instruction affects the power of a committee in considering amendments which trench upon the purport of the rejected instruction, will be found in the decision by the chairman, Tithe Rent-Charge Recovery Bill, 1889, 339 H. D. 3 s. 1185. 1228.

<sup>9</sup> 144 C. J. 333. 339.

<sup>10</sup> 116 C. J. 376. 385; 126 ib. 114. 120.

<sup>11</sup> 93 C. J. 204. 526; 94 ib. 465. 497.

was an occasional, but not the constant, practice to put first the motion for a smaller sum or longer time :<sup>1</sup> but according to later practice, this rule has not been observed in committees upon bills.<sup>2</sup> Where the proposed sum was already printed in the bill, and another sum was proposed, the latter was put in the form of an amendment, without reference to the relative amount of the two proposals ;<sup>3</sup> and this practice is now uniformly observed.

In the Lords, new clauses are brought up and inserted in their proper places, while the committee are going through the bill :<sup>4</sup> but in the Commons, all the clauses of the bill are considered before any new clauses are brought up and added to the bill ; though new clauses have been considered before postponed clauses (see p. 374). The new clauses proposed by the minister, or other member in charge of the bill, are considered before other new clauses.<sup>5</sup> Members desiring to offer new clauses are called upon in the order in which their names appear upon the notice paper and before those members who have not given notice of their new clauses.<sup>6</sup>

If a new clause be offered, the chairman desires the member to bring it up, and it is read the first time without question put. A question is then put for reading the clause a second time, and, if this is agreed to, the clause may be amended before the question is put for adding it to the bill.

A new clause, however, will not be entertained if it is beyond the scope of the bill,<sup>7</sup> inconsistent with clauses agreed to by the committee,<sup>8</sup> or substantially the same as a clause previously negatived.<sup>9</sup> A new clause is also out of order if it ought to be moved as an amendment to a clause of the bill<sup>10</sup> or if it needs an instruction.<sup>11</sup>

Schedules to a bill are considered, as a rule,<sup>12</sup> after new clauses are disposed of, and they are treated in the same manner as clauses. When the schedules have been considered, new schedules are offered.

<sup>1</sup> 88 C. J. 617.

<sup>2</sup> In committee on the Vice-President of the Committee of Council on Education Bill, it was proposed to fill up the blank, for the salary of the office, with 2000*l.* : it was afterwards proposed to fill it up with 1200*l.* ; and the question was put and decided upon the sum first proposed, 111 C. J. 363.

<sup>3</sup> 110 C. J. 223 ; 111 ib. 353.

<sup>4</sup> 88 L. J. 234 ; 99 ib. 499. 500.

<sup>5</sup> 208 H. D. 3 s. 802.

<sup>6</sup> 27 H. C. Deb. 5 s. 976 ; 41 ib. 2577 ;

72 ib. 1740. 1748.

<sup>7</sup> 175 Parl. Deb. 4 s. 985 ; 85 H. C. Deb. 5 s. 2195. 2428.

<sup>8</sup> 114 C. J. 103.

<sup>9</sup> 179 H. D. 3 s. 538. A new clause which was in effect a re-drafting of a clause already in the bill has been ruled out of order, 82 H. C. Deb. 5 s. 1005.

<sup>10</sup> 15 Parl. Deb. 4 s. 1433 ; 41 ib. 1703 ; 74 ib. 858 ; 125 ib. 587. 588.

<sup>11</sup> 16 Parl. Deb. 4 s. 257.

<sup>12</sup> Schedules have been considered before new clauses, 99 C. J. 517. 536.

If a schedule be disagreed to, another cannot be offered to supply its place, until the remaining schedules have been disposed of. A new schedule is brought up, read the first time and second time, amended, if need be, and added to the bill.<sup>1</sup>

Close of  
procedure  
on a bill.

When all the clauses and schedules have been agreed to, and any new clauses or schedules added, the preamble is considered, and, if necessary, is amended;<sup>2</sup> and the chairman puts the question, "That this be the preamble of the bill." Lastly, in the Lords, the title of the bill is considered and agreed to; and in the Commons, any amendment that may be necessary is then made to the title.<sup>3</sup>

Power of  
commit-  
tees over  
bills.

Doubts have arisen whether the committee, to whom a bill has been referred, can by amendment so change the provisions of the bill, that when it is reported to the house, the bill is in substance a bill other than that which was referred to the committee. A committee can negative every clause of which the bill committed to them is composed, and can substitute for those clauses new clauses, if relevant to the bill, as read a second time, and otherwise in order.<sup>4</sup> On the other hand, in 1856, the Partnership Amendment Bill having been committed *pro formâ*, was extensively amended, no amendment being inserted which it was not clearly competent for the committee to entertain. When objection was taken that it had become a new bill, the minister in charge of it, while denying the alleged extent of the amendments, consented to withdraw the bill.<sup>5</sup> In 1889 appeal was made to the Speaker regarding extensive alterations made by the committee on the Tithe Rent-Charge Recovery Bill. He stated that, whilst he desired to safeguard the rights and jurisdiction of the chairman of ways and means in giving an opinion on a matter of committee procedure, and although he could not, as Speaker, stop the bill on the point of order that the bill was a new bill, he unhesitatingly affirmed that the practice of the house had been, in a case of this kind, to withdraw a bill which had been so dealt with, and to introduce another bill in the amended form, on which the decision of the house could be obtained upon a second reading. The bill was

<sup>1</sup> 99 C. J. 512; 122 ib. 365.

<sup>2</sup> 99 C. J. 78, 72 H. D. 3 s. 1324; 99 C. J. 154; 100 ib. 135; 104 ib. 505; 155 ib. 256. See also 25 H. C. Deb. 5 s. 446. Where a bill has not a preamble, it has been held to be out of order to move one, 55 H. C. Deb. 5 s. 455.

<sup>3</sup> 110 C. J. 223; 111 ib. 276; 112 ib. 373; 153 ib. 261. No question is otherwise put on the title, or on the title, as amended, 55 H. C. Deb. 5 s. 465.

<sup>4</sup> Coroners in Boroughs Bill, 147 C. J. 259.

<sup>5</sup> 140 H. D. 3 s. 2200.

thereupon withdrawn.<sup>1</sup> On the 27th January, 1913, the Speaker was asked to express his opinion as to certain amendments which it was proposed to move to the Franchise and Registration Bill which was then being considered in committee of the whole house. The Speaker while declaring that the proper time for raising such a question was after the bill had been reported to the house, said that the admission of any one of the amendments to which his attention had been directed would so alter the bill as to make it a new bill, and that he would advise the house under the circumstances that the bill should be withdrawn and leave be asked for the introduction of a new bill.<sup>2</sup>

When the lord, or member, having charge of a bill desires to introduce numerous amendments in order to improve the measure, and render it more generally acceptable to the house, he may move that the bill be committed *pro formâ*—a course which is rarely objected to.<sup>3</sup> In such cases the proposed amendments are not separately considered; nor is any question put upon the several clauses of the bill. The proceeding is entirely formal; the chairman reports the bill, with the amendments, to the house; and it is reprinted in its amended form, and recommitted for a future day.<sup>4</sup> Lords' bills may also be so treated in the House of Commons. It is not, however, regular when the consideration of a bill has been begun in the usual way, to deal with the remaining clauses *pro formâ*: but it has been arranged that all subsequent amendments, though put from the chair, shall be accepted without discussion.<sup>5</sup> When a bill, having been committed *pro formâ*, is recommitted, it is considered as if the bill had been committed for the first time.

The house is not supposed to be informed of the proceedings of the committee until the bill has been reported; and discussion of the clauses, with the Speaker in the chair, is consequently irregular. If the committee cannot go through the whole bill at one sitting in the Lords, the chairman puts a question that the house be

Bills committed *pro formâ*.

Proceedings of committee not known until reported.  
Report of progress.

<sup>1</sup> 339 H. D. 3 s. 1487. See also pp. 439, 735, n. 2.

<sup>2</sup> 167 C. J. 510, 47 H. C. Deb. 5 s. 1019; see also ib. 643, 878.

<sup>3</sup> The Speaker has overruled objections to his leaving the chair for this purpose during the time of unopposed business, 268 H. D. 3 s. 116; 34 Parl. Deb. 4 s. 1143.

<sup>4</sup> 155 C. J. 204; 171 ib. 231, 87 H. C. Deb. 5 s. 711.

<sup>5</sup> 142 H. D. 3 s. 939. In the case of the Board of Pensions Bill although an

amendment had been made to Clause 1 and progress had been reported on a previous day, when the bill was again considered government amendments of which notice had been given were made to the bill by general consent as in a *pro formâ* committee, and the bill was reported to the house and recommitted forthwith. A parliamentary paper had been circulated showing the effect of these amendments, 171 C. J. 242, 88 H. C. Deb. 5 s. 537.

resumed, which being agreed to, he leaves the chair and moves that the house be put into committee on a future day. In the Commons, the committee direct the chairman to report progress, and ask leave to sit again.<sup>1</sup> Occasionally on the chairman's report, the house has immediately resolved itself again into the committee.<sup>2</sup>

When  
committee  
make no  
report.

The proceedings of a committee on a bill may be brought abruptly to a close, by an order, "That the chairman do now leave the chair;"<sup>3</sup> or by a proof that a quorum is not present (see p. 208). The chairman in such cases, being without instructions from the committee, makes no report to the house. A bill disposed of in this manner disappears from the order book; though it can be revived by an order of the house<sup>4</sup> (see p. 235). When a committee on a bill is revived, its proceedings are resumed at the point at which they were interrupted,—having been valid, and duly recorded in the minutes, until the chairman was directed to leave the chair.<sup>5</sup>

Report of  
the bill.

S. O. 52,  
Appendix  
I.

When the bill has been fully considered, the chairman puts a question, "That I do report this bill without amendment," or "with the amendments, to the house;" which being agreed to, he leaves the chair, under standing order No. 52, without question put, and Mr. Speaker resumes the chair; upon which the chairman approaches the steps of the Speaker's chair, and reports from the committee that "they have gone through the bill, and have made amendments," or "several amendments thereto," and, if the title of the bill has been amended, such amendment is specially reported.<sup>6</sup> If no amendments have been made, he reports, "that they have gone through the bill, and directed him to report the same, without amendment."

Proceed-  
ings on  
report.  
Lords.

In the Lords, the bill is at once reported if there be no amendments: but, unless the standing orders be suspended (see p. 400), the bill cannot be further proceeded with. Standing order No. 39 also directs that when amendments are made to a bill, no report can

<sup>1</sup> See report, "no progress," when several bills have been referred to a committee, 124 C. J. 268, &c.

<sup>2</sup> 111 C. J. 316; see also p. 198, n. 6, and p. 477, n. 7. On the 21st January, 1913, when progress had been reported at the conclusion of the portion of a bill which had to be disposed of at seven o'clock under an order of the house, the house resolved that on the disposal of the report of a money resolution, which had to be agreed to before the next clauses of the bill could be considered, it would resolve itself again into the committee on the

bill, 167 C. J. 499.

<sup>3</sup> 90 C. J. 497. 562; 105 ib. 345; 111 ib. 201; 112 ib. 310; 126 ib. 339, &c.

<sup>4</sup> 176 H. D. 3 s. 99. "No committee can destroy a bill, but they can lay it down," More's Notes of Debates in the Long Parliament, 14th April, 1641; Harl. MSS.

<sup>5</sup> Savings Banks and Friendly Societies Bill, 31st July, 1860, MS. Committee Minute-Book; 115 C. J. 402. 427.

<sup>6</sup> 115 C. J. 343; 120 ib. 95. See also 64 H. C. Deb. 5 s. 2117.



be received from a committee of the whole house, "the same day such committee goes through the bill." In the absence of the chairman of committees, leave has been given to another peer to report the amendments.<sup>1</sup> On the 2nd April, 1868, it was resolved, that in entering in the journals the reports of bills amended in committees of the whole house, the only name entered therewith shall be that of the lord who moves the reception of the report, and takes charge of the bill in that stage.<sup>2</sup>

In the Commons, pursuant to standing order No. 39, the chairman, at the close of the proceedings of the committee, reports the bill forthwith to the house, and any amendments thereto are received without debate, and a time is appointed for taking the same into consideration. On the report of a bill, if no amendments have been made, the bill is ordered to be read the third time forthwith (see p. 384), or a future day is appointed for the third reading. If amendments have been made by the committee, the bill as amended is usually ordered to be taken into consideration on a future day; though, if the occasion should arise, the bill as amended may, upon the report thereof, be immediately considered by the house (see p. 384).

Proceedings on report.  
Commons.  
S. O. 39,  
Appendix  
L.

Bills materially amended in committee are, if it be requisite, re-printed before consideration as amended, by order made when the bill is reported to the house. Occasionally; while a bill has been in progress, the amended clauses, so far as they have been agreed to, have been ordered to be printed<sup>3</sup> or have been printed, by direction of the Speaker, and circulated with the votes.<sup>4</sup>

Bills re-printed.

By standing order No. 40, when the order of the day for the consideration of a bill, as amended in the committee of the whole house, has been read, the house proceeds to consider the same without question put, unless the member in charge thereof desires to postpone its consideration, or a motion be made to recommit the bill. If neither of these motions is made, or if no member moves a new clause, whereof notice stands upon the notice paper, or an amendment to the bill, no question arises on this stage; and the Speaker

Consideration of bill, as amended.  
S. O. 40,  
Appendix  
L.

<sup>1</sup> 91 L. J. 33.

<sup>2</sup> 100 L. J. 103.

<sup>3</sup> 170 C. J. 281. A bill or a part of a bill has also been ordered to be printed so as to show the effect of the amendments to be proposed by the government, 164 C. J. 360. 370. 482; 171 ib. 239, or has

been so presented as a command paper (see p. 565), 165 ib. 301.

<sup>4</sup> Representation of the People Bill, 1867; Irish Church Bill, 1869; Irish Land Bill, 1870; Land Law (Ireland) Bill, 1881; Land Purchase (Ireland) Bill, 1891, &c.

calls upon the member in charge of the bill, who names a day for the third reading,<sup>1</sup> or moves "That the bill be now read the third time."

Restric-  
tion on  
amend-  
ments.

S. O. 41,  
Appendix  
I.

When the bill, as amended by the committee, is considered, the entire bill is open to consideration, and new clauses may be added, and amendments made. According to former usage, the amendments might be wholly irrelevant to the subject-matter of the bill (see p. 364).<sup>2</sup> This vicious practice was, in 1888, rendered impossible by standing order No. 41, which prescribes that no amendment may be proposed to a bill on consideration, which could not have been proposed in committee without an instruction from the house. The practice of the house as to the admissibility of amendments described in connection with the committee stage of bills (see p. 370) applies generally to amendments on consideration of a bill as amended.

New  
clauses.  
S. O. 38,  
Appendix  
I.

By standing order No. 38, no clause may be offered on the report stage of a bill, unless notice thereof has been given; <sup>3</sup> and it has been held that such notice must comprise the words of the clause intended to be proposed; and where a clause has been offered, differing materially from the notice, it has not been entertained.<sup>4</sup> This defect of notice cannot be supplied by an amendment being proposed to the clause by another member; as the clause cannot be amended until it has been received and read a second time.<sup>5</sup> A member has not been permitted to move a clause, of which another member had given notice,<sup>6</sup> and a member, who is not in his place when called upon by the Speaker to move a new clause, is not called again when the rest of the new clauses upon the notice paper have been disposed of.<sup>7</sup> New clauses are first offered, priority being given to clauses moved by the member in charge of the bill; after which amendments may be proposed to the preamble and the several clauses of the bill as reported by the committee. A clause that is moved on the consideration of the bill as amended is read the first time without question put; and before this stage, the member who proposes the clause may speak in support thereof. The question is then proposed from the chair,

<sup>1</sup> 280 H. D. 3 s. 1825; 282 ib. 1096.

<sup>2</sup> 99 C. J. 63.

<sup>3</sup> On 21st July, 1898, a notice of an amendment on the report stage of the Evidence in Criminal Cases Bill [Lords], standing in the name of the Attorney-General, which was in effect a new clause (see p. 372), was accepted by the Speaker as notice of a new clause, 153 C. J. 365; Supplement to the Votes, p. 2547. New clauses, notice of which had not been cir-

culated but which were allowed by the Speaker to appear on the notice paper, when re-printed (see p. 208, n. 4) for the information of members, were not allowed to be moved, 163 Parl. Deb. 4 s. 61.

<sup>4</sup> 109 C. J. 336, 134 H. D. 3 s. 694; 151 ib. 1036.

<sup>5</sup> 134 H. D. 3 s. 694.

<sup>6</sup> 231 H. D. 3 s. 662; 282 ib. 1995; 85 H. C. Deb. 5 s. 1962.

<sup>7</sup> Private ruling, 13th July, 1903.

"That the clause be read a second time;" which is the proper time for opposing the clause; and the member who has proposed it can address the house. If this question be affirmed, amendments may then be proposed to the clause, but a motion to postpone the clause will not be permitted.<sup>1</sup> Sometimes the motion for reading the clause a second time and the clause are, by leave of the house, withdrawn.<sup>2</sup> The last question put by the Speaker is, "That the clause, or the clause as amended, be added to the bill;" and on this question a further debate may arise.<sup>3</sup>

When the new clauses upon the notice paper have been disposed of, the Speaker calls on the members who have given notice of amendments to the bill, and on the members who rise to move amendments which have not been placed upon the notice paper. Amendments are offered as in committee in the order in which, if agreed to, they will stand in the amended bill; but if a proposed amendment be withdrawn, a prior amendment may be moved.<sup>4</sup> Where an amendment is proposed to be made to the bill by leaving out the preamble or a clause of the bill, a question is put, that "the preamble" <sup>5</sup> or such clause <sup>6</sup> "stand part of the bill." A motion to postpone a clause will not be permitted on report.<sup>7</sup> After the clauses of the bill have been disposed of, new schedules may be proposed in the same manner as new clauses,<sup>8</sup> after which amendments may be made to the schedules of the bill as reported by the committee.<sup>9</sup>

No amendments will be allowed which are inconsistent with the provisions of the bill which have been considered by the house.<sup>10</sup> An amendment on consideration of a bill, as amended, to leave out its only effective clause is not in order.<sup>11</sup> When notice has been

<sup>1</sup> 95 Parl. Deb. 4 s. 1549.

<sup>2</sup> 112 C. J. 332, 393. An amendment proposed to a new clause after it had been read a second time and the new clause have been by leave of the house withdrawn, 125 ib. 300.

<sup>3</sup> 171 H. D. 3 s. 188.

<sup>4</sup> 231 H. D. 3 s. 525.

<sup>5</sup> 148 C. J. 504; 162 ib. 420. During the progress of the debate on such a motion, the Speaker has ruled that the whole bill was not before the house, and that to bring the whole bill under consideration would be a violation of standing order No. 40, which directs that when a bill is brought up on report, the house do pro-

ceed at once to consider the clauses of the bill, without general discussion of the bill as a whole. The preamble should, therefore, be considered as a clause, and the discussion thereon should be as much confined to it, as if a clause was under discussion, 16 Parl. Deb. 4 s. 293; 180 ib. 1428.

<sup>6</sup> 113 C. J. 285, 339.

<sup>7</sup> 150 Parl. Deb. 4 s. 375.

<sup>8</sup> 122 C. J. 365; 127 ib. 339; 130 ib. 204; 150 ib. 297.

<sup>9</sup> 122 C. J. 365.

<sup>10</sup> 258 H. D. 3 s. 1597, 1628; 338 ib. 1155; 282 ib. 1198; 354 ib. 184-189.

<sup>11</sup> 27 H. C. Deb. 5 s. 710; 39 ib. 2040.

taken on report that clauses not relevant to the subject-matter of the bill have been introduced in committee, the bill has been recommitted in respect of those clauses.<sup>1</sup>

Amend- When the amendments proposed to the bill have been disposed of, ment of the title of the bill is amended if necessary.<sup>2</sup>

Charges On consideration of a bill on report, no clause or amendment may upon the be proposed which creates a charge upon the public revenue, or upon people. rates or local burthens upon the people, or which increases taxation (see p. 456), but the bill may be recommitted in respect of any such proposed clause or amendment. In respect of a charge upon rates or local burthens, a bill may be recommitted and considered in committee forthwith :<sup>3</sup> but in the case of a clause or amendment which creates a charge upon the public revenue, this course cannot be taken unless previously such charge has been recommended by the Crown, and sanctioned by a resolution of a committee of the whole house, which has been agreed to by the house upon report.<sup>4</sup>

Recom- It may be necessary to recommit a bill to a committee of the whole mittal of house, and occasionally to a select committee, before it is read bills. the third time ; and debate on this motion must be restricted to the purpose and extent of the proposed recommitment of the bill.<sup>5</sup> If the member who has charge of the bill, and other members also, desire the recommitment of the bill, the former has priority in making the motion for that purpose.<sup>6</sup> A bill may be recommitted without limitation, in which case the entire bill is again considered in committee, and reported with " other " or " further " amendments. A bill may be recommitted also with an instruction to the committee that they have power to make some particular or additional provision.<sup>7</sup>

Partial A bill may be recommitted with respect to particular clauses or recom- amendments only,<sup>8</sup> or to the clauses in which amendments are pro- mittal. posed to be made and the preamble,<sup>9</sup> or in respect of new clauses<sup>10</sup> or of new clauses and amendments to the schedule consequential upon their acceptance,<sup>11</sup> or in respect of specified amendments standing

<sup>1</sup> 119 C. J. 172. Notice taken on report that a clause has been inserted in committee by mistake : clause struck out, 109 ib. 403.

<sup>2</sup> 155 C. J. 253.

<sup>3</sup> 124 C. J. 296.

<sup>4</sup> 93 C. J. 605.

<sup>5</sup> 212 H. D. 3 s. 1277 ; 72 Parl. Deb. 4 s. 1079 ; 161 ib. 757 ; 28 H. C. Deb. 5 s.

1907.

<sup>6</sup> 179 H. D. 3 s. 800.

<sup>7</sup> 89 C. J. 127 ; 93 ib. 605 ; 94 ib. 318 ; 107 ib. 311.

<sup>8</sup> 83 C. J. 533 ; 94 ib. 510 ; 143 ib. 213. 407. 437. 528 ; 171 ib. 58.

<sup>9</sup> 120 C. J. 304 ; 125 ib. 208. 346.

<sup>10</sup> 170 C. J. 327.

<sup>11</sup> 161 C. J. 453.

upon the notice paper,<sup>1</sup> or in respect of a clause and of new clauses moved by the government relating to specified subjects.<sup>2</sup> On clauses or schedules being offered, or intended to be proposed, the bill may be recommitted with respect to these clauses or schedules.<sup>3</sup> A bill has also been recommitted in respect of certain clauses and of any new clauses relating to the subject-matter of those clauses.<sup>4</sup> In all these cases only so much of the bill is considered in the committee as is specified in the order for recommitment.<sup>5</sup>

A bill may be recommitted as often as the house thinks fit. Bills have been recommitted twice,<sup>6</sup> and even six, and seven times.<sup>7</sup>

Sometimes, after the house has ordered a bill to be read the third time on a future day, this order is discharged and the bill recommitted; <sup>Further recom- mittal.</sup> or amendments have been moved to the question for reading. <sup>Recom- mittal on third reading.</sup> ing a bill the third time in order to obtain the recommitment of the bill.<sup>9</sup>

The proceedings on the report of a recommitted bill are similar to those already explained: and on report the bill, as amended, is taken into consideration forthwith, and is read the third time (see p. 384), or further proceedings thereon are appointed for a future day. <sup>Report of recom- mitted bill.</sup>

The details of a bill may often be considered more conveniently by a select committee (see p. 424) than by a standing committee or in committee of the whole house, and when it is deemed advisable to take evidence, the necessary powers are given to the committee for that purpose.<sup>10</sup> Indeed, according to the ancient practice, all ordinary bills were committed to such committees, and none but the most important were reserved for the consideration of a committee of the whole house: but now, even though a bill has been considered by a select committee, it is recommitted to a committee of the whole house. <sup>Commit- tal of bills to select com- mittees.</sup>

In 1849, the ancient system of ingrossing bills upon parchment, after the report, was discontinued, and both houses agreed to substitute bills, printed on vellum by the Queen's printer, for the parchment rolls.<sup>11</sup> By the adoption of this system, the old form of <sup>Discon- tinuance of ingross- ment.</sup>

<sup>1</sup> 163 C. J. 304; 170 ib. 210.

<sup>2</sup> 171 C. J. 137.

<sup>3</sup> 108 C. J. 570; 116 ib. 121; 126 ib. 289; 127 ib. 427; 132 ib. 411.

<sup>4</sup> 128 C. J. 360.

<sup>5</sup> 179 H. D. 3 s. 826.

<sup>6</sup> 83 C. J. 354; 89 ib. 286; 93 ib. 605; 94 ib. 318; 170 ib. 327. 330.

<sup>7</sup> 65 C. J. 384. 396. 420; 69 ib. 420. 444. 460.

<sup>8</sup> 110 C. J. 117; 111 ib. 208; 112 ib. 318. 339. 384, &c.

<sup>9</sup> 112 C. J. 391; 118 ib. 167. 275.

<sup>10</sup> 104 C. J. 253; 106 ib. 164.

<sup>11</sup> 81 L. J. 16. 25; 104 C. J. 51. 578. 620.

question, "That this bill be ingrossed," upon the report stage, was dispensed with.

Third  
reading.

Bills read  
the third  
time  
forthwith.

On the third reading of a bill, such amendments as have been already described in reference to a second reading (see p. 357) may be proposed to the question for now reading the bill the third time. According to present usage in the House of Commons, it is not unusual to take the third reading of a bill immediately after the consideration thereof in the house upon report,<sup>1</sup> or upon the report of the bill from a committee of the whole house, if the bill is reported without amendment.<sup>2</sup> Bills which have been amended in committee are also sometimes considered forthwith on report and read the third time.<sup>3</sup> Bills also have been committed to a committee of the whole house immediately after the second reading, and on the report, without amendment, have been read the third time,<sup>4</sup> or if amended in committee have been considered forthwith and read the third time.<sup>5</sup> If the general concurrence of the house is accorded to the proposal from the chair of the questions consequent upon such procedure, it is not necessary to obtain, as a preliminary, the leave of the house thereto (see p. 250).<sup>6</sup> These facilities are, however, not accorded in the case of a bill founded on a committee resolution based on the recommendation of the Crown, unless an order of the house has been made for this purpose after notice (see p. 459).

Amend-  
ments on  
third  
reading.

S. O. 42,  
Appendix  
I.

The question for the third reading may be negatived: but, as previously stated (see p. 357), such a vote is not fatal to the bill.<sup>7</sup> In the Lords, new clauses may be added, and amendments made to the bill, at this stage; and the same practice formerly prevailed in the Commons: but, by standing order No. 42, verbal amendments only can be made to a bill on the third reading. When material amendments are desirable, the order for the third reading of the bill may be discharged, and the bill recommitted to introduce the amendments in committee. In such cases it has been customary

<sup>1</sup> 135 C. J. 360; 147 ib. 83. 98. 294. 369; 161 ib. 500, 161 Parl. Deb. 4 s. 894; 166 ib. 500.

<sup>2</sup> 97 C. J. 480. 482; 107 ib. 335; 113 ib. 352; 133 ib. 435; 147 ib. 103. 106. 125. 148, &c.

<sup>3</sup> 161 C. J. 226; 169 ib. 421. 422. 439. 451. 453; 170 ib. 19. 21, &c.; 171 ib. 84. 168. 188. 189. 192. 237. 240. 243.

<sup>4</sup> 163 C. J. 512; 166 ib. 426; 167 ib. 83; 169 ib. 439. 445. 446. 447. 449. 452. 458. 460. 462; 170 ib. 30. 83. 113. 127. 160. 211. 229. 322; 171 ib. 138. 193. 249.

<sup>5</sup> 169 C. J. 438. 446. 457. 460; 170 ib. 288; 171 ib. 167. 258. A bill has been considered in committee immediately after second reading and on being reported with amendments has been ordered for consideration on a subsequent day, 169 C. J. 458.

<sup>6</sup> 274 H. D. 3 s. 1360; 348 ib. 1112. 1148; 48 Parl. Deb. 4 s. 1079; 6 H. C. Deb. 5 s. 1330; 66 ib. 685; 75 ib. 2138; 85 ib. 2232.

<sup>7</sup> Combination of Workmen Bill, 108 C. J. 410. 417. 536.

to consider the bill as amended, and to read it the third time, immediately.<sup>1</sup>

In the Lords, the original title of a bill is amended at any stage at which amendments are admissible, when alterations in the body of the bill have rendered any change in the title necessary. In the Commons, in addition to the opportunities offered by the committee (see p. 376) and report (see p. 382) stages, amendments may be offered to the title on the third reading stage of a bill.<sup>2</sup>

A bill has been read the third time, and further proceedings upon the question, "That this bill do pass," have been adjourned to a future day.<sup>3</sup> Such a course is impossible in the House of Commons, as that question, being practically obsolete, is invariably omitted, though the form is preserved upon the journal;<sup>4</sup> and thus, according to established usage, a bill, when read the third time, has passed, and consequently the question thereon is not put from the chair.<sup>5</sup> An entry is occasionally made in the journal, at the discretion of the house (see p. 257), that a bill was read the third time and passed, *nemine contradicente*.<sup>6</sup>

It may be as well to recall to mind, in this place, that standing Temporary order No. 45 of the Commons directs that the precise duration of every temporary law shall be expressed in a distinct clause at the end of the bill.<sup>7</sup> By the Acts of Parliament (Expiration) Act, 1808 (48 Geo. III. c. 106), if a bill be in Parliament for the continuance of any temporary Act, and such Act expires before the royal assent is given to the bill, the Act to be continued does not lapse in the interval.

Throughout all these stages and proceedings, the bill itself continues in the custody of the Clerk or other officers of the house, and no alteration whatever is permitted to be made in it, without the

Bill not to be altered otherwise than by amendment.

<sup>1</sup> 112 C. J. 384; 115 ib. 174; 144 ib. 309. 381; 160 ib. 401.

<sup>2</sup> 104 C. J. 581; 105 ib. 338; 117 ib. 378; 143 ib. 325. 441; 171 ib. 234.

<sup>3</sup> After the third reading of the Queen's Degradation Bill in the House of Lords, 10th Nov. 1820, the further consideration of the bill was put off for six months, 53 L. J. 761.

<sup>4</sup> Under the former procedure, the question, "That this bill do pass," has been negatived, 76 C. J. 413; 80 ib. 617; 89 ib. 497; 119 ib. 388. See also for debate and divisions that have taken place thereon, 86 ib. 860; 106 ib. 335; 108 ib.

692; 110 ib. 372; 117 ib. 383.

<sup>5</sup> 258 H. D. 3 s. 1832; 289 ib. 1583.

<sup>6</sup> 10 C. J. 280. Mr. Speaker's Retirement Bill, 1857, was passed *nem. con.*, whereon the Speaker addressed his acknowledgments to the house, 112 C. J. 110. See debate and motion regarding this entry on the occasion of the Representation of the People Bill, 139 C. J. 321. 324, 289 H. D. 3 s. 1561.

<sup>7</sup> An amendment cannot be moved to a clause with the object of making a bill of temporary duration, 181 Parl. Deb. 4 s. 599.

express authority of the house or a committee, in the form of an amendment regularly put from the chair, and recorded by the clerks at the table or by the chairman in committee.<sup>1</sup>

Communi-  
cated  
from  
Lords to  
Commons.

The next step is to communicate the bill to the other house. The Lords ordinarily send their bills to the Commons by the Clerk of the Parliaments, or by a clerk at the table (see p. 531). When the bill has originated in the Lords, "a message is ordered to be sent to the House of Commons to carry down the said bill, and desire their concurrence." If the bill has been sent up from the Commons, and has been agreed to without amendment, the Lords send a message "to acquaint them that the Lords have agreed to the said bill without any amendment," but do not return the bill unless it is a bill for granting aids or supplies (see p. 392); but if they have made amendments, they return the bill with a message, "that the Lords have agreed to the same with some amendments, to which their lordships desire their concurrence."

From  
Commons  
to Lords.

The Commons send up their bills to the Lords by their Clerk, or by one of the clerks at the table, who delivers it at the bar, to one of the clerks at the table of that house. The form of message adopted by the Commons in sending bills to the upper house is similar, *mutatis mutandis*, to that used by the House of Lords. The Lords, by standing order No. 38, direct "that when a bill brought from the House of Commons shall have remained on the table of this house for twelve sitting days, without any lord giving notice of the second reading thereof, such bill shall not any longer appear among the bills in progress, and shall not be further proceeded with in the same session, except after eight sitting days' notice given by a lord of the second reading thereof; provided that such notice shall not be given after the first day of August." In 1873, the Public Worship Facilities Bill, brought from the Commons, having come under the operation of this order, was removed from the minutes, but on the 20th May, the standing order was suspended in respect of the bill, which was allowed to proceed. In 1870, the Common Law Procedure Bill, having fallen under the operation of this order, was revived on the 26th April, with a slight alteration in the title. In 1886, however, the Lords refused to suspend the standing order in the case of the Copyhold Enfranchisement Bill.<sup>2</sup>

<sup>1</sup> See debate, 3rd June, 1782, as to alterations alleged to have been made without authority by Mr. Burke, paymaster of the forces, in the ingrossment

of a bill for regulating the pay office, 23 Parl. Hist. 989; 3 Wraxall's Mem. 431.

<sup>2</sup> 118 L. J. 261.



Every bill received from the Lords is returned to them by the Return of Commons when passed, with or without amendments, the House of bills to the Lords. Lords being the place of custody for bills, prior to the royal assent.

If a bill or clause be carried to the other house by mistake, or if Bills sent any other error be discovered, a message is sent to have the bill by mis- returned, or the clause expunged, or the error otherwise rectified take. by the proper officer.<sup>1</sup> In 1844, an amendment made by the Lords, in the Merchant Seamen's Bill, was omitted from the paper of amendments returned with the bill to the Commons. After all the amendments received by the Commons had been agreed to, they were informed by the Lords that an amendment had been omitted, by mistake, and that their concurrence was desired : but, at the instance of the Speaker, the Commons declined to take the amendment into consideration, and the Lords did not insist upon it.<sup>2</sup>

By standing order No. 43, Lords' amendments to public bills are appointed to be considered on a future day, unless the house shall consideration of Lords' order that the amendments be considered forthwith (see p. 219),<sup>3</sup> amendments. though if objection be taken, the consideration of the amendments S. O. 43, may be deferred. Occasionally, also, if the proceeding be required Appendix x by the state of public business, the reading of the orders of the day<sup>4</sup> or the business under discussion<sup>5</sup> has been interrupted by the communication of a Lords' message to the house (see p. 240), and the amendments to the bill thereby transmitted to the Commons have been considered forthwith. Amendments more than verbal are, if it be desirable, ordered to be printed and circulated with the notice paper ; and an order has been made that the bill, as amended by the Lords, be printed.<sup>6</sup> When the order of the day is read for considering Lords' amendments to a bill, a question is put, " That the Lords' amendments be now taken into consideration ; " but it is not permissible to discuss thereon the provisions of the bill.<sup>7</sup> An amendment may be moved, to leave out " now," and add " upon this day three months,"<sup>8</sup> or to leave out " now taken into consideration," and add " laid aside : " <sup>9</sup> but generally the house proceeds to the

<sup>1</sup> 1 C. J. 132 ; 75 ib. 447 ; 78 ib. 317 ; 80 ib. 512 ; 91 ib. 639. 646 ; 92 ib. 572. 609 ; 100 ib. 804 ; 101 ib. 1277 ; 103 ib. 736 ; 112 ib. 420 ; 114 ib. 241 ; 119 ib. 370. 374.

<sup>2</sup> 99 C. J. 637. 638. 644, 76 H. D. 3 s. 1994.

<sup>3</sup> 110 C. J. 458. 464, &c. ; 135 H. D. 3 s. 1411 ; 225 ib. 650.

<sup>4</sup> 146 C. J. 340 ; 161 ib. 485 ; 167 ib. 507.

<sup>5</sup> 126 C. J. 57 ; 170 ib. 31, 68 H. C. Deb. 5 s. 1595.

<sup>6</sup> 111 C. J. 312. 324 ; 131 ib. 365.

<sup>7</sup> 28 Parl. Deb. 4 s. 1489 ; 87 ib. 825 ; 74 H. C. Deb. 5 s. 2059, *et seq.*

<sup>8</sup> 113 C. J. 349.

<sup>9</sup> 97 C. J. 278 ; 99 ib. 572 ; 108 ib. 393.

consideration of the amendments. The amendments are read a second time one by one,<sup>1</sup> and unless it is proposed to divide, postpone or amend the amendment, a motion is made "That this house doth agree<sup>2</sup> (or disagree) with the Lords in the said amendment." During the consideration of such amendments certain amendments have been read and postponed, and subsequent amendments taken into consideration.<sup>3</sup> Where the Lords have added a clause, leaving a blank for a penalty, the house has gone into committee on the clause, and filled up the blank.<sup>4</sup> In debate on a Lords' amendment no reply or second speech is permitted on the motion that the house do agree or disagree thereto:<sup>5</sup> debate also must be confined to the amendment, and may not extend to other amendments<sup>6</sup> or the general merits of the bill.<sup>7</sup>

Amend-  
ments to  
Lords'  
amend-  
ments and  
conse-  
quential  
amend-  
ments.

If one house agree to a bill passed by the other, without any amendment, no further discussion or question can arise upon it; but the bill is ready to be put into the commission for receiving the royal assent. If a bill be returned from one house to another with amendments, these amendments must either be agreed to by the house which had first passed the bill, or the other house must waive their amendments: otherwise the bill will be lost. Sometimes one house agrees to the amendments, with amendments, to which the other house agrees.<sup>8</sup> Occasionally, this interchange of amendments is carried even further, and one house agrees to amendments with amendments, to which the other house agrees with amendments; to which, also, the first house in its turn agrees.<sup>9</sup> In some cases the Lords have left out clauses or words, to the omission of which the

<sup>1</sup> On two occasions the question for agreeing or disagreeing with Lords' amendments has been put by order of the house with respect to the amendments as a whole, 161 C. J. 491. 494; 164 ib. 529, 12 H. C. Deb. 5 s. 2179.

<sup>2</sup> An amendment to insert "not" in this question is inadmissible, 231 H. D. 3 s. 1176. Motions both for agreeing and disagreeing to Lords' amendments have been negatived, 163 C. J. 511; 170 ib. 88; 171 ib. 259. 260. Notice has been given of the motions proposed to be made on consideration of Lords' amendments and of amendments proposed to be moved to the amendments. Notices of Motions, sess. 1908, pp. 5876. 5944. 6022.

<sup>3</sup> 90 C. J. 624; 142 ib. 456; see also 351 H. D. 3 s. 1470.

<sup>4</sup> 123 C. J. 345; 125 ib. 398; 126 ib. 420.

<sup>5</sup> 197 H. D. 3 s. 1949.

<sup>6</sup> 45 H. C. Deb. 5 s. 713.

<sup>7</sup> 241 H. D. 3 s. 846. 1059; 167 Parl. Deb. 4 s. 1879; 181 ib. 1201; 182 ib. 269; 29 H. C. Deb. 5 s. 1104; 49 ib. 43.

<sup>8</sup> 90 C. J. 624. 626. 629. The title of a bill has been amended, to make it conform to the Lords' amendments, 109 ib. 486.

<sup>9</sup> 111 C. J. 373; 112 ib. 416; 118 ib. 381. 412; 125 ib. 384; 127 ib. 158. 413; 128 ib. 128. 357; 138 ib. 478. 486. For examples of an interchange of amendments between the two houses, see the proceedings on the Land Law (Ireland) Bill, 1881, and the Arrears of Rent (Ireland) Bill, 1882. See also Appendix VI.

Commons have disagreed, but on restoring such clauses or words have, at the same time, proposed to amend them.<sup>1</sup> A Lords' amendment has been divided, and a separate question put upon each part of it.<sup>2</sup> Sometimes one house does not insist upon its amendments, but makes other amendments.<sup>3</sup> When an amendment made by the Lords has been agreed to, by mistake, with an amendment, the proceedings have been ordered to be null and void, and the amendment disagreed to.<sup>4</sup> An amendment cannot be proposed to a Lords' amendment after the question for agreeing thereto has been proposed from the chair.<sup>5</sup> An amendment made by one house to an amendment made by the other, should be relevant to the same subject-matter.<sup>6</sup> If an amendment be proposed to a Lords' amendment, not consequent on, or relevant to, such amendment, the question will not be put from the chair.<sup>7</sup> A departure from this rule was permitted, under peculiar circumstances, in the case of the Bolton Police Bill, 1839 : but the Lords agreed to it with a special entry in the journal, that it was not to be drawn into a precedent ; and a protest was signed by five very influential peers against agreeing to the amendment.<sup>8</sup> It is also a rule, that neither house may, at this time, leave out or otherwise amend anything which they have already passed themselves ; unless such amendment be immediately consequent upon the acceptance or the rejection of an amendment of the other house. In 1678, it was stated by the Commons at a conference, " that it is contrary to the constant method and proceedings in Parliament, to strike out anything in a bill which hath been fully agreed and passed by both houses ; " <sup>9</sup> and in allowing consequential amendments, either in the body of the bill, or in the amendments, the spirit of this rule is still maintained.<sup>10</sup> So binding,

<sup>1</sup> 93 C. J. 824-826 ; 118 ib. 326, 365 ; 125 ib. 346 ; 127 ib. 305, 343 ; 128 ib. 346, 356 ; 136 ib. 461.

<sup>2</sup> 124 C. J. 332 ; 148 ib. 672 ; 162 ib. 431 ; 164 ib. 516, 540 ; 167 ib. 454 ; 171 ib. 92.

<sup>3</sup> 125 C. J. 403.

<sup>4</sup> 113 C. J. 264.

<sup>5</sup> 181 Parl. Deb. 4 s. 312.

<sup>6</sup> Objection cannot be taken to a Lords' amendment on the ground of order, 116 Parl. Deb. 4 s. 1403 ; 81 H. C. Deb. 5 s. 2690 ; 85 ib. 2695. The Speaker has stated that it was his duty to put the question upon the motion for agreeing with one of the Lords' amendments to the

Commons' amendments to a Bill, although the Lords' amendment, though relevant to the bill, was not consequential on the Commons' amendment. He left it to the house to agree to the Lords' amendment, or to disagree on the ground of inconsequence or any other ground, 64 Parl. Deb. 4 s. 241.

<sup>7</sup> 115 C. J. 494.

<sup>8</sup> 71 L. J. 643.

<sup>9</sup> 1 C. J. 388 ; 9 ib. 547.

<sup>10</sup> 91 C. J. 592 ; 93 ib. 829 ; 95 ib. 604 ; 97 ib. 577, 597 ; 105 ib. 592, 596, 631 ; 107 ib. 358 ; 109 ib. 443, 135 H. D. 3 s. 828 ; 112 C. J. 420 ; 115 ib. 394, 491, 495, 501 ; 117 ib. 344, 368 ; 121 ib. 472 ; 131 ib. 268, 422. In the case of the Poor

indeed, has it been held, that in 1850, a serious oversight, as to the commencement of the Act, having been discovered in the Pirates' Head Money Bill, before the Lords' amendments had been agreed to, no attempt was made to correct it by way of amendment,<sup>1</sup> but a separate Act was passed for the purpose.

Amend-  
ments  
affecting  
privilege.

Procedure on amendments by the Lords which affect the privileges of the Commons, in regard to matters of aid or supply, is considered elsewhere (see p. 509).

When  
amend-  
ments dis-  
agreed to.

When it is determined to disagree to amendments made by the other house : 1. An order may be made that the bill, or the Lords' amendments, be laid aside ;<sup>2</sup> or the order for the consideration of the Lords' amendments may be discharged, and the bill withdrawn ;<sup>3</sup> 2. The consideration of the amendments may be put off for three or six months, or to any time beyond the probable duration of the session ;<sup>4</sup> 3. A message may be sent to communicate reasons, which are drawn up by a committee appointed forthwith for that purpose,<sup>5</sup> for disagreeing to the amendments ;<sup>6</sup> or, 4. A conference may be desired with the other house (see p. 532). According to established usage, when a bill has been returned by either house to the other, with amendments which are disagreed to, a message is sent, or a conference is desired, by the house which disagrees to the amendment, to acquaint the other with the reasons for such disagreement, in order to reconcile their differences, and, if possible, by mutual concessions to arrive at an ultimate agreement. If such agreement cannot be secured, the bill is lost for the session<sup>7</sup> (see p. 513).

Reasons  
offered in  
cases of  
disagree-  
ment.

When one house agrees to amendments made by the other, or does not insist upon its own amendments, or upon its disagreement to amendments, no reasons are offered ; the object of reasons

Law Boards (Payment of Debts) Bill, 1859, the Commons disagreed to a clause inserted by the Lords, on the ground of privilege, but inadvertently agreed to a subsequent amendment, which was consequent on that clause. The Lords did not insist upon their clause, and corrected the latter part of the bill by a consequential amendment, 114 C. J. 375.

<sup>1</sup> 105 C. J. 471.

<sup>2</sup> 110 C. J. 417.

<sup>3</sup> 111 C. J. 380. 386. A similar procedure has been followed in the case of Lords' reasons for insisting on amendments, 161 C. J. 509.

<sup>4</sup> 94 C. J. 546 ; 141 ib. 271.

<sup>5</sup> 106 C. J. 438 ; 108 ib. 809 ; 122 ib. 440 ; 136 ib. 453, &c.

<sup>6</sup> A message has been sent to the Lords that the Commons insist on their disagreement to the Lords' amendments : but the course is unusual, 133 C. J. 377.

<sup>7</sup> In session 1912-13 the Lords insisted upon certain of their amendments to the Temperance (Scotland) Bill to which the Commons had disagreed and proposed new amendments in lieu of certain other amendments to which the Commons had disagreed. The Lords' amendments were ordered to be printed but further action was not taken, 167 C. J. 553.

being to persuade the other house, and not to justify a resolution of its own. On the 21st July, 1858, the Lords, having made an amendment to the Oaths Bill, insisted upon it, after reasons had been offered against it at a conference: but in the meantime they passed a separate bill virtually to effect the object sought to be attained by the Commons—the admission of Jews to Parliament. In order to record the true circumstances of the case, without departing from the usage of Parliament, the Commons agreed to a resolution, “That this house does not consider it necessary to examine the reasons offered by the Lords for insisting upon the exclusion of Jews from Parliament, as, by a bill of the present session, their lordships have provided means for the admission of persons professing the Jewish religion, to seats in the legislature.” After which a message was sent to acquaint the Lords that the house did not insist upon their disagreement, without any reasons.<sup>1</sup>

The official record of the assent of one house to bills passed, or amendments made by the other, is by indorsement of the bill in old Norman French. Thus, when a bill is passed by the Commons, the Clerk of the house<sup>2</sup> writes upon the top of it, “*Soit baillé aux seigneurs.*” When the Lords make amendments, it is returned with an indorsement, signed by the Clerk of the Parliaments, “*A ceste bille avecque des amendemens les seigneurs sont assentus.*” When it is sent back with these amendments agreed to, the Clerk of the House of Commons writes, “*A ces amendemens les communes sont assentus.*” When amendments are disagreed to, a message is sent to the Lords stating the fact and communicating the reasons agreed to by the house for their disagreement and the bill is endorsed “*Ceste bille est remise aux seigneurs avecque des raisons.*” Bills are communicated by the Lords to the Commons with similar indorsements, *mutatis mutandis*. If amendments made by the Lords are agreed to by the Commons, the latter return the bill with the message signifying their agreement. If amendments made by the Commons are agreed to by the Lords, their lordships send a message,<sup>3</sup> but retain the bill for the royal assent (see p. 387).

When bills, either public or private, have been finally agreed to by both houses, they only await the royal assent to give them, as Lord Hale says, “the complement and perfection of a law;”<sup>4</sup> and

<sup>1</sup> 113 C. J. 332.

<sup>2</sup> In his absence, the clerk assistant is authorized to indorse bills.

<sup>3</sup> This message has been received by

the Commons after the royal assent has been given to the bill, 2 Hatsell, 339.

<sup>4</sup> Hale, Jurisd. of Lords, c. 2.

from that sanction they cannot legally be withheld.<sup>1</sup> So binding is this principle that doubts have arisen whether a Commons' bill may be read the third time and passed by the Lords, without amendment, after a commission has been submitted to the Sovereign and before it is brought down to Parliament. For this reason, procedure on third readings and on Lords' amendments has been postponed: but this has not been an invariable practice.<sup>2</sup> On the 3rd June, 1856, the Commons having adjourned, for want of forty members, before a commission was received, another commission was appointed for the 5th, and in the meantime intimation was given that no bills should be returned to the Lords agreed to without amendment, or with Lords' amendments agreed to, until after the commission, lest it should become necessary to alter the commission so as to embrace them. For the purpose of obtaining the royal assent, bills remain in the custody of the Clerk of the Parliaments, except bills for granting aids and supplies to the Crown (see p. 394), which are returned to the Commons before the royal assent is given; and when the necessity arises, the lord chancellor has notice that a commission is wanted. The Clerk of the Parliaments then prepares two sets of the titles of all the bills, each title being stated on a separate piece of paper: one set being for the Clerk of the Crown to insert in the commission, and the other for his Majesty's inspection, before he signs the commission.<sup>3</sup> Bills for granting aids and supplies to the Crown are placed first in these sets, and are followed by public bills, local and personal bills, and private bills. When the King comes in person to give his royal assent (see p. 395) the clerk assistant of the House of Lords waits upon his Majesty in the robing-room,<sup>4</sup> before he enters the house, reads a list of the bills and receives his commands upon them.<sup>5</sup> During the progress of a session, the royal assent is generally given by a commission issued under the great seal for that purpose.

Origin of  
giving

The first instance in which the royal assent appears to have been

<sup>1</sup> See 2 Hatsell, 339; 13 L. J. 756; Burnet, ii. 274; Campbell, Lives, iii. 354.

<sup>2</sup> See Whale Fisheries Bill, 10th July, 1789, 38 L. J. 497.

<sup>3</sup> The forms of commissions for declaring the royal assent, when Parliament has been opened by the Sovereign, and by commission, are prescribed by the rules made by her late Majesty Queen Victoria by order in council, pursuant to the Crown

Office Act, 1877, Parl. Pap. (H. C.) sess. 1878, No. 87. These commissions now have the wafer great seal attached, instead of the old wax seal.

<sup>4</sup> Mr. Birch's Evidence, Parl. Pap. (H. C.) sess. 1843, No. 413, p. 10.

<sup>5</sup> The idea that a session was concluded by the royal assent being signified to a bill, ceased to exist more than two centuries ago.

given by commission was in the 33rd Henry VIII., although proceedings very similar had occurred in the 23rd and 25th years of the reign of that king.<sup>1</sup> The lord chancellor produced two Acts agreed to by the Lords and Commons; one for the attainder of the queen and her accomplices; and the other for proceeding against lunatics in cases of treason; each Act being signed by the king, and the royal assent being signified by a commission under the great seal, signed by the king, and annexed to both the Acts.<sup>2</sup> To prevent any doubts as to the legality of this mode of assenting to an Act, the two following clauses were put into the Act for the attainder of the queen, enacting

royal as-  
sent by  
com-  
mission.

“That the king’s royal assent, by his letters patent under his great seal and assigned with his hand, and declared and notified in his absence to the Lords spiritual and temporal, and to the Commons assembled together in the high house, is and ever was as of good strength and force as though the king’s person had been there personally present, and had assented openly and publickly to the same:—And that this royal assent, and all other royal assents hereafter to be so given by the kings of this realm, and notified as is aforesaid, shall be taken and reputed good and effectual to all intents and purposes without doubt or ambiguity, any custom or use to the contrary notwithstanding.”<sup>3</sup>

In strict compliance with the words of this statute, the commission is always, “by the King himself, signed with his own hand,”<sup>4</sup> and attested by the Clerk of the Crown in chancery. On the 7th March, 1702, William III. signed, with a stamp, the commission assenting to the Abjuration Act.<sup>4</sup> Towards the latter end of the reign of George IV., it became painful to him to sign any instrument with his own hand, and he was enabled, by statute, to appoint one or more person or persons, with full power and authority to each of them to affix, in his Majesty’s presence, and by his Majesty’s command, given by word of mouth, his Majesty’s royal signature, by means of a stamp to be prepared for that purpose;<sup>5</sup> and the commission for giving the royal assent to bills on the 17th June, 1830, bears the stamp of the king, attested according to the provisions of that Act.<sup>6</sup> On the 5th February, 1811, the Regency Bill received the royal assent by commission under peculiar circumstances. The king was incapable of exercising any personal authority: but the great seal was nevertheless affixed to a commission for giving the royal assent to that

Form of  
commis-  
sion.

<sup>1</sup> 33 Hen. VIII. c. 21, Stat. of the Realm, i. p. lxxiii.

<sup>2</sup> 1 L. J. 176.

<sup>3</sup> Stat. of the Realm, i. p. lxxiv.

<sup>4</sup> Macaulay, Hist. v. 308.

<sup>5</sup> 11 Geo. IV. c. 23.

<sup>6</sup> 62 L. J. 732.

bill. When the Commons had been summoned to the bar of the House of Lords by the lords commissioners, the lord chancellor said, "My lords and gentlemen, in obedience to the commands, and by virtue of the powers and authority to us given by the said commissions . . . we do declare and notify his Majesty's royal assent to the Act in the said commission mentioned, and the clerks are required to pass the same in the usual form and words;" after which the royal assent was signified by the Clerk in the usual words, "*Le roy le veult.*"<sup>1</sup>

Procedure on royal assent given by commission.

The form in which the royal assent is signified by commission is as follows. Three or more of the lords commissioners, seated on a form between the throne and the wool-sack in the House of Lords, command the usher of the Black Rod to signify to the Commons that their attendance is desired in the house of peers to hear the commission read (see p. 161), upon which the Commons, with the Speaker, immediately come to the bar. The commission is then read at length, and the titles of the bills being afterwards read by the Clerk of the Crown, the royal assent to each is signified by the Clerk of the Parliaments, in Norman French; and is so entered in the Lords' Journal.

Form of royal assent.

A bill for granting aids and supplies to the Crown (see p. 501) being carried up by the Clerk of the House of Commons, is handed to the Clerk of the Parliaments by the Speaker and receives the royal assent before all other bills. The assent is pronounced in the words, "*Le roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*" For a public bill the form of expression is, "*Le roy le veult;*" for a private bill, "*Soit fait comme il est désiré;*" upon a petition demanding a right, whether public or private, "*Soit droit fait comme il est désiré.*" In an act of grace or pardon which has the royal assent before it is agreed to by the two houses, the ancient form of assent was, "*Les prelates, seigneurs, et communes, en ce present parlement assemblés, au nom de tous vos autres sujets, remercient tres humblement vostre majesté, et prient à Dieu vous donner en santé bonne vie et longue;*"<sup>2</sup> but according to more modern practice, the royal assent has been signified in the usual form, as to a public bill.<sup>3</sup>

Refusal of Royal assent.

The form of words used to express a denial of the royal assent

<sup>1</sup> 48 L. J. 70, 18 H. D. 1 s. 1125; see also Debates, 27th Feb. 1804 (Commons); 1st and 9th March, 1804 (Lords), 1 H. D.

1 s. 507, 634, 807, Eldon, i. 416, 418.

<sup>2</sup> D'Ewes, 35.

<sup>3</sup> 20 L. J. 546; 27 ib. 137.



would be, "*Le roy s'avisera.*"<sup>1</sup> The necessity of refusing the royal assent is removed by the strict observance of the constitutional principle, that the Crown has no will but that of its ministers, who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a bill for settling the militia in Scotland.<sup>2</sup>

During the Commonwealth the lord protector gave his assent to bills in English: but on the Restoration, the old form of words was reverted to; and only one attempt has since been made to abolish it. In 1706, the Lords passed a bill "for abolishing the use of the French tongue in all proceedings in Parliament and courts of justice." This bill dropped in the House of Commons; and although an Act passed in 1731 for conducting all proceedings in courts of justice in English, no alteration was made in the old forms used in Parliament. Until the latter part of the reign of Edward III., all parliamentary proceedings were conducted in French, and the use of English was exceedingly rare until the reign of Henry VI. All the statutes were then enrolled in French or Latin, but the royal assent was occasionally given in English. Since the reign of Henry VII., all other proceedings have been in the English language, but the old form of royal assent has been retained.<sup>3</sup>

The royal assent is rarely given in person, except at the close of a session, when the King attends to prorogue the Parliament (see p. 192), and then he signifies his assent to such bills as may have passed since the last commission was issued: but bills for making provision for the honour and dignity of the Crown, such as bills for settling the civil lists, were generally assented to by the sovereign in person, immediately after they had passed both houses.<sup>4</sup> When

Use of the  
Norman  
French.

Given by  
the King  
in person.

<sup>1</sup> 1 L. J. 162; 13 ib. 394 (with reasons); 18 ib. 506.

<sup>2</sup> 18 L. J. 506.

<sup>3</sup> See Stat. of the Realm, Introduction, and Report of Statute Law Commissioners, Parl. Pap. (H. C.) sess. 1835, No. 406, p. 16.

<sup>4</sup> See Civil List Bills, 1820, 75 C. J. 258; 1831, 86 ib. 517; 1838, 93 ib. 227. In 1901 and 1910 the royal assent to the Civil List Bill was given by commission, 156 ib. 282, 165 ib. 293. On the 2nd Aug. 1831, the Speaker, after a short speech in relation to the bill for supporting the royal dignity of her Majesty Queen Adelaide,

delivered it to the Clerk, when it received the royal assent in the usual form: but the Queen, attended by one of the ladies of her bedchamber, and her maids of honour, was present, and sat in a chair placed on a platform raised for that purpose between the archbishops' bench and the bishops' door, and after the royal assent was pronounced, her Majesty stood up and made three courtesies, one to the king, one to the Lords, and one to the Commons, 63 L. J. 885, 1157. The precedent here followed was that of George III. and Queen Charlotte; Earl Grey's Corr. with William IV., i. 314.

the King gives his royal assent to bills in person, the Clerk of the Crown reads the titles, and the Clerk of the Parliaments makes an obeisance to the throne, and then signifies his Majesty's assent, in the manner already described. A gentle inclination, indicative of assent, is given by his Majesty, who has, however, already given his commands to the Clerk of the Parliaments, as already stated.

Given in the sovereign's absence from the realm.

During the year 1876, her Majesty being about to visit the continent during the session, it became a question whether her Majesty could give her royal assent to bills, by commission, during her absence from the realm. No case could be found in which the royal assent had been so given: but in the Act 2 William and Mary, "for the exercise of the Government by his Majesty during his Majesty's absence" (in Ireland), there was a proviso that "nothing should be taken to exclude or debar his Majesty, during his absence from the realm, from the exercise of any act of royal power, but that every such act should be as good and effectual as if his Majesty was within this realm;" and it had been stated by the lord chancellor (Lyndhurst), 7th August, 1845, that any act which her Majesty "could do as sovereign would have as much validity and effect, if done on the continent of Europe, as if done in her own dominions."<sup>1</sup> The lord chancellor (Cairns) also, in 1876, gave it as his opinion (privately) that her Majesty would be able to give the royal assent to bills while absent from the realm; and this course has been followed whenever the necessity arose.

Passage into law of bills without consent of the House of Lords.

Conditions are laid down by the Parliament Act, 1911 (1 & 2 Geo. V. c. 13) (see p. 519), under which bills which have passed the House of Commons may acquire the force of law without passing the House of Lords. Public bills, in which term provisional order bills are not included, are divided for the purposes of the Act into "money bills" as defined by the Act, and other public bills.

Definition of money bill.

A money bill is defined as a public bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation;<sup>2</sup> the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation,

<sup>1</sup> 82 H. D. 3 s. 1515.

<sup>2</sup> The expressions "taxation," "public money," and "loan" respectively do

not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them.<sup>1</sup>

A money bill which has been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, but which is not passed by the House of Lords without amendment within one month after it is so sent up to it, is, unless the House of Commons direct to the contrary, to be presented to his Majesty and becomes an Act of Parliament on the royal assent being signified to it. A money bill when it is sent up to the House of Lords,<sup>2</sup> and when it is presented to his Majesty, must be endorsed with the Speaker's certificate<sup>3</sup> that it is a money bill.<sup>4</sup> Before

*Procedure upon a money bill.*

<sup>1</sup> The expression "money bill" to which a statutory meaning has now been given has been constantly used over a long period without precise definition. The terms "a bill concerning money" and "bills relating to money" used in the Commons' Messages of the 24th July, 1660, and the 8th March, 1696, referred to bills of supply. The term was also used in the House of Commons in this sense during debate in 1679 (7 Grey, Deb. 216), in Roger North's Examen, p. 460, and at a later period in the reference by Queen Victoria of the Petition of the Legislative Council and Assembly of Queensland to the Judicial Committee of the Privy Council in 1886 (C. 4794). It has been used sometimes in a wider sense to include bills originating in committee of the whole house to which the royal recommendation has been signified, and even bills imposing local rates, Stephen's Commentaries, ii. 359. It may therefore be well to notice here that a bill for granting aids and supplies to the Crown may fail to secure the Speaker's certificate as a money bill as its provisions are not confined to the objects contained in the statutory definition, e.g. the Finance Bill of session 1911, 32 H. C. Deb. 5 s. 2707, and the Finance and Finance (No. 3) Bills of session 1914-16. For the same reason a bill originating in a committee of the whole house appointed with the royal recommendation has not received the Speaker's certificate, e.g. Highlands and Islands (Medical Service) Bill, sess. 1913. On the other hand, bills have been certified to be "money bills" as coming within the statutory definition, although they did not grant money to

the Crown for supply services or impose taxation and did not originate in a committee of the whole house with the royal recommendation, e.g. the Public Buildings Expenses Bill in session 1913 (see p. 464), and the American Loan Bill in session 1914-16 (see p. 465), which provided an alternative method of using borrowing powers already authorized, 170 C. J. 257. The inclusion in a bill of charges for services rendered (see p. 466) for which a resolution of the committee of ways and means was not required would prevent the bill from being a money bill, 74 H. C. Deb. 5 s. 1035.

<sup>2</sup> The Speaker on being asked his opinion as to whether the acceptance of a proposed amendment to a bill would prevent his certifying the bill as a money bill has declined then to rule on the subject, as he conceived his duty to be to consider the bill as a whole in the form in which it would leave the House of Commons, 41 H. C. Deb. 5 s. 2667. See also 31 ib. 1209.

<sup>3</sup> A certificate given by the Speaker under the Act is conclusive for all purposes and is not to be questioned in any court of law, section 3.

<sup>4</sup> 143 L. J. 517. A bill has been endorsed as being a "money bill" by the Deputy Speaker, 169 C. J. 453. The chairman has declined in committee to anticipate the Speaker's decision as to whether the acceptance of a proposed amendment would prevent a bill being certified as a money bill or to allow the effect of an amendment in this regard to be raised as a point of order, 72 H. C. Deb. 5 s. 1704.

giving this certificate the Speaker is directed to consult, if practicable, those two members of the chairmen's panel (see p. 417) who are appointed for the purpose at the beginning of each session by the committee of selection.<sup>1</sup>

Procedure on bills, other than money bills.

In the case of public bills, other than money bills within the meaning of the Act,<sup>2</sup> it is provided that a bill which is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and which, having been sent up to the House of Lords at least one month before the end of the session, is rejected<sup>3</sup> by the House of Lords in each of those sessions, shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to his Majesty and become an Act of Parliament on the royal assent being signified to it.<sup>4</sup> Two years must elapse between the second reading of the bill in the House of Commons in the first of these sessions and its passing in the House of Commons in the third session.

Limits of changes in bill in succeeding session.

A bill is deemed to be the same bill as the bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time which has elapsed since the date of the former bill,<sup>5</sup> or to represent any amendments which have been made by the House of Lords in the former bill in the preceding session.

Amendments by the Lords in third session.

If any of the amendments made by the Lords in the third session are agreed to by the Commons they are to be inserted in the bill as presented for the royal assent and are to be certified by the Speaker as having been so made and agreed to.

Speaker's certificate.

A bill other than a money bill when presented to his Majesty for assent in pursuance of section two of the Act must be endorsed with the certificate of the Speaker signed by him that the provisions of the section have been duly complied with.<sup>6</sup> When the royal assent is signified to such bills at the same time as to bills which have been agreed upon by both houses, a separate commission is issued for the purpose.<sup>7</sup>

<sup>1</sup> 166 C. J. 453 ; 167 ib. 28.

<sup>2</sup> A bill containing any provision to extend the maximum duration of parliament beyond five years is exempted from the provisions of the Act, section 2 (1).

<sup>3</sup> A bill is rejected by the House of Lords if it is not passed by that house either without amendment or with such

amendments only as may be agreed to by both houses, section 2 (3).

<sup>4</sup> Government of Ireland Act, 1914, and Welsh Church Act, 1914, 146 L. J. 423.

<sup>5</sup> 168 C. J. 235. 244 ; 169 ib. 226. 244. 264.

<sup>6</sup> 169 C. J. 466.

<sup>7</sup> 146 L. J. 423.

Provision is also made by which the House of Commons may, on the passage of such a bill through the house in the second or third session, suggest further amendments without inserting them in the bill.<sup>1</sup> Any such suggested amendments are to be considered by the House of Lords, and, if agreed to by that house, are to be treated as amendments made by the House of Lords and agreed to by the House of Commons. It is also provided that the exercise of this power by the House of Commons shall not prejudice the position of the bill in the event of its rejection by the House of Lords.

Suggestion of amendments by Commons.

A form of enacting words is prescribed for use in the case of a bill passed under the provisions of the Act.<sup>2</sup>

Form of enacting words.

When Acts are passed, the original ingrossment rolls (or, since 1849, the authenticated vellum prints) are preserved in the House of Lords; and all public and local and personal Acts, and nearly all private Acts, are printed by the King's printer;<sup>3</sup> and printed copies are referred to as evidence in courts of law. The original rolls or prints may also be seen when necessary, and copies taken, on the payment of certain fees.

Printing of Acts.

All Acts of Parliament, of which the commencement was not specifically enacted, were formerly held, in law, to take effect from the first day of the session: but the Clerk or clerk assistant of the Parliaments is now required by the Acts of Parliament (Commencement) Act, 1793 (33 Geo. III. c. 13), to indorse, in English, on every Act of Parliament, immediately after the title, the day, month, and year when the same shall have passed and received the royal assent, which indorsement is to be a part of the Act, and to be the date of its commencement, when no other commencement is provided in the Act itself.

Commencement of Act.

The forms commonly observed by both houses, in the passing of bills, having been explained, it must be understood that they are not absolutely binding. Though founded upon long parliamentary usage, either house may vary its own peculiar forms, without question elsewhere, and without affecting the validity of any act which has received, in proper form, the ultimate sanction of the three

Forms not binding in the progress of bills.

<sup>1</sup> 168 C. J. 243, 55 H. C. Deb. 5 s. 469. Amendments must be suggested before the third reading of the bill, each suggested amendment being moved as a separate resolution, and, if agreed to, would be sent to the Lords with the bill after it had passed the House of Commons, 61 H. C.

Deb. 5 s. 1348, 62 ib. 931.

<sup>2</sup> Section 4. See 4 & 5 Geo. V. cc. 90. 91.

<sup>3</sup> See question relating to a printer's error in the Elementary Education Act, 1891, 1 Parl. Deb. 4 s. 687.

branches of the legislature. If an informality be discovered during the progress of a bill, the house in which it originated will either order the bill to be withdrawn, or will annul the informal proceeding itself, and all subsequent proceedings :<sup>1</sup> but if irregularities escape detection until the bill has passed, no subsequent notice can be taken of them, as it is the business of each house to enforce compliance with its own orders and practice.

Bills  
passed  
with un-  
usual ex-  
pedition.

In the ordinary progress of a bill, the proceedings either follow from day to day, or some days are allowed to intervene between each stage subsequent to the first reading ; by <sup>as has been already</sup> explained two or more stages of a public bill are sometimes taken on the same day in the House of Commons (see pp. 347, 353 n., 379, and 384). When a pressing emergency arises, bills are passed through all their stages in the same day,<sup>2</sup> and even by both houses,<sup>3</sup> and the royal assent has also been signified on the same day.<sup>4</sup> This unusual expedition is, in the Lords, at variance with standing order No. 39, which strictly forbids the passing of a bill through more than one stage in a day, and which is formally dispensed with on such occasions.<sup>5</sup> On the 9th April, 1883, no notice having been given on the previous day to suspend the standing orders (see p. 139) in regard to the Explosive Substances Bill, the house resolved, " That it was essentially necessary for the public safety that the bill should be proceeded in with all possible despatch, and that notwithstanding

<sup>1</sup> 106 C. J. 82. 209 ; 108 ib. 412. 578 ; 109 ib. 96 ; 114 ib. 138 ; 134 ib. 300.

<sup>2</sup> 98 C. J. 491. 492 ; 103 ib. 770 ; 108 ib. 21. 251. 823. 837 ; 169 ib. 427. 435. 437. 461 ; 170 ib. 137. 257. A bill has been brought from the Lords, passed through all its stages and returned to the Lords on the same day, 104 C. J. 475. 477.

<sup>3</sup> 58 C. J. 645. 646 ; 138 C. J. 126. 115 L. J. 76 ; 169 C. J. 427, 146 L. J. 377 ; 169 C. J. 464, 146 L. J. 420. The Explosive Substances Bill was passed through all its stages, in both houses, on one day, and received the royal assent on the following day at twelve o'clock, 138 C. J. 126. 128.

<sup>4</sup> Bill for recruiting the land forces, 3rd April, 1744, 24 C. J. 636-639 ; Seamen's Additional Pay Bill, 9th May, 1797, 52 ib. 555. 557. 558 ; Habeas Corpus Suspension (Ireland) Bill, 121 ib. 88 ; Postponement of Payments Bill, 160 ib. 407 ; Prize Courts (Procedure) Bill, ib. 419 ; Aliens

Restriction Bill, ib. 420 ; Currency and Bank Notes Bill, ib. 427 ; Army (Supply of Food, Forage and Stores) Bill and Patents, Designs and Trade Marks Bill, ib. 433 ; Special Constables (Scotland) Bill, ib. 439. In the case of the Habeas Corpus Suspension (Ireland) Bill in session 1866, the bill was passed by both houses on a Saturday, and the Queen being at Osborne, the commission, with the bill annexed, was forwarded to her Majesty in the morning, and the agreement of both houses having been communicated later in the day by telegraph, her Majesty signed the commission and despatched it to Westminster. In 1871, the Queen being at Balmoral, and again, in 1876, while the Queen was in Germany, the telegraph was used in like manner.

<sup>5</sup> 80 L. J. 661 ; 98 ib. 41. For suspension of the standing order for the remainder of the session, see 146 L. J. 373 ; for the remainder of the week, 147 ib. 18.

the standing orders, the lord chancellor ought forthwith to put the question upon every stage of the said bill, on which this house shall think it necessary for the public safety to proceed thereon ;” and immediately passed the bill through all its stages.<sup>1</sup> A similar course has been followed on subsequent occasions when notice of the suspension of standing order No. 39 could not be given.<sup>2</sup> In the Commons, there are no orders which forbid the passing of public bills with unusual expedition ; and it is nothing more than an occasional departure from the usage of Parliament, justified by the circumstances of the particular case, sanctioned by the general concurrence of the house (see p. 384) ; as, though one stage may follow another with unaccustomed rapidity, they are as open to discussion as at other times.<sup>3</sup>

Although a departure from the usage of Parliament, during the progress of a bill, will not vitiate a statute, informalities in the final agreement of both houses have been treated as if they would affect its validity. No decision of a court of law upon this question has ever been obtained : but doubts have arisen there ; and in two modern cases Parliament has thought it advisable to correct, by law, irregularities of this description. It has already been explained that, when one house has made amendments to a bill passed by the other, it must return the bill with the amendments, for the agreement of that house which first passed it. Without such a proceeding the assent of both houses could not be complete ; for, however trivial the amendments may be, the judgment of one house only would be given upon them, and the entire bill, as amended and ready to become law, would not have received the formal concurrence of both houses. If, therefore, a bill should receive the royal assent, without the amendments made by one house having been communicated to the other and agreed to, serious doubts naturally arise concerning the effect of this omission ; since the assent of the King, Lords, and Commons, except under the circumstances described on page 396, is essential to the validity of an Act. 1. Will the royal assent cure all prior irregularities, in the same way as the passing of a bill in the Lords would preclude inquiry as to informalities in any previous stage ? 2. Is the indorsement on the bill, recording the assent of King, Lords, and Commons, conclusive evidence of that fact ? or, 3. May the journals of either house be permitted to contradict it ?

<sup>1</sup> 115 L. J. 76.

<sup>2</sup> 146 L. J. 355. 366.

<sup>3</sup> 184 H. D. 3 s. 2107.

Pylking-  
ton's case,  
33 Henry  
VI.

The first case in which a difficulty arose was in the 33rd Henry VI. In the session commencing 29th April, 1450, the Commons passed a bill requiring John Pylkington to appear, on a charge of rape, "by the Feast of Pentecost then next ensuing."<sup>1</sup> It does not appear distinctly whether the bill was even brought into the Commons before that day in the year 1450: but it certainly was not agreed to by the Lords until afterwards. By the law of Parliament then subsisting, the date of an Act was reckoned from the beginning of a session; and the Lords, to avoid this construction, altered the date to "the Feast of Pentecost, which will be in the year of our Lord 1451:" but did not return the bill, so amended, to the Commons. Pylkington appeared before the Exchequer Chamber, to impeach the validity of this Act, "because the Lords had granted a longer day than was granted by the Commons, in which case the Commons ought to have had the bill back." Chief Justice Fortescue held the Act to be valid, as it had been certified by the king's writ to have been confirmed by Parliament; though he added these words to his decision, "peradventure the matter ought to wait until the next Parliament, then we can be certified by them of the certainty of the matter." But Chief Baron Illingworth and Mr. Justice Markham were of opinion that if the amendment made the bill vary in effect from that which was sent up from the Commons, the Act would be invalid.

Factories  
Bill.

In 1829, a bill "to amend the law relating to the employment of children in factories," passed the Commons, and was agreed to by the Lords, with an amendment: but instead of being returned to the Commons, it was, by mistake, included in a commission, and received the royal assent. The amendment was afterwards agreed to by the Commons: but, in order to remove all doubts, an Act<sup>2</sup> was passed to declare that the Act "shall be valid and effectual to all intents and purposes, as if the amendment made by the Lords had been agreed to by the Commons before the said Act received the royal assent."

School-  
masters'  
Widows'  
(Scotland)  
Fund Bill.

In 1843, the Schoolmasters' Widows' Fund (Scotland) Bill was returned to the Commons with amendments: but, before these were agreed to, the bill was removed from the table, without authority from the house, and carried up to the Lords with other bills. The proper indorsement, viz. "*A ces amendemens les communes sont assentus*," was not upon this bill; yet the omission was not observed,

<sup>1</sup> Year Books, 33rd Henry VI.

<sup>2</sup> 10 Geo. IV. c. 63.



and the bill received the royal assent on the 9th May. After an examination of precedents, this Act was made valid by a new enactment.<sup>1</sup>

It is a curious fact, in connection with an informality of this character on the face of a bill, that a commission expressly recites that the bills "have been agreed to by the Lords spiritual and temporal, and the Commons, and indorsed by them as hath been accustomed." The informality in this case would therefore appear to have been greater than in that of 1829; because, in the former, the indorsements were complete, and, as they are without date, it would not appear, except from the journals, that the amendment had been agreed to after the royal assent had been given: but in the latter, the agreement of the Commons would be wanting on the face of the record.

In case of any accidental omission in the indorsement, the bill should be returned to the house whence it was received; as, on the 8th March, 1580, 23rd Elizabeth, when a schedule was returned to the Commons and the indorsement amended there; because "*soit baillé aux seigneurs*" had been omitted, and the Lords had therefore no warrant to proceed.<sup>2</sup>

Having noticed the effect of informalities in the consent of both houses to a bill, the last point that requires any observation is the consequence of a defect or informality in the commission or royal assent. On the 27th January, 1546, when King Henry VIII. was on his death-bed, the lord chancellor brought down a commission under the sign manual, and sealed with the great seal, addressed to himself and other lords, for giving the royal assent to the bill for the attainder of the Duke of Norfolk, which had been passed, with indecent haste, through both houses. Early the next morning the king died, and the duke was saved from the scaffold, but was imprisoned in the Tower during the whole reign of Edward VI. On the accession of Queen Mary, he took his seat in the House of Lords, was appointed to be one of the triers of petitions; and also, by patent, on the 17th August, to be lord high steward for the trial of the Duke of Northumberland. In the next session, the Act of Attainder was declared void by statute,<sup>3</sup> because, after reciting certain informalities in the commission, no record existed showing

Imperfect indorsement.

Procedure on accidental omissions from indorsement.

Informalities in royal assent.

<sup>1</sup> 6 & 7 Vict. c. lxxxvi. (local and personal); Parl. Pap. (H. C.) sess. 1843, No. 413.

Course of Passing Bills in Parliament, 4to 1641.

<sup>3</sup> 1 Mary, No. 27; Stat. of the Realm, i. p. lxxv.

<sup>2</sup> D'Ewes, 303; 1 C. J. 132; Order and

that the commissioners did give the king's royal consent to the bill, which therefore

"remayneth in verie dede as no Acte of Parlyament, but as a bill onelie exhibited in the saide Parlyament, and onelie assented unto by the saide lordes and cōmons, and not by the saide late king."

The same Act declared—

"That the lawe of this realme is and alwaies hath byn, that the royall assent or consent of the king or kings of this realme, to any Acte of Parlyament ought to be given in his own royall presence, being personallie in the higher howse of Parlyament, or by his letters patents under his great seale, assigned with his hande, and declared and notified in his absence to the lords spiritual and temporal, and the Cōmons, assembled together in the higher howse, according to a statute made in the 33rd yere of the reigne of the saide late King Henry VIII."

Transposi-  
tion of  
titles.

In 1809, the titles of two bills relating to the town of Worthing were transposed, and the royal assent signified to both, so incorrectly indorsed, without further notice. In 1821, the titles of two local Acts had been, by a similar error, transposed in the indorsement when the bills received the royal assent. Each Act, consequently, had been passed with the title belonging to the other; and the mistake was corrected by Act of Parliament.<sup>1</sup>

Royal as-  
sent given  
by mis-  
take.

In 1844, there were two Eastern Counties Railway Bills in Parliament. One had passed through all its stages, and the other was still pending in the House of Lords, when on the 10th May the royal assent was given, by mistake, to the latter, instead of to the former. On the discovery of the error, an Act was passed by which it was enacted that when the former Act *shall have received the royal assent*, it shall be as valid and effectual from the 10th May, as if it had been properly inserted in the commission, and had received the royal assent on that day; and that the other bill shall be in the same state as if its title had not been inserted in the commission, and shall not be deemed to have received the royal assent.<sup>2</sup>

<sup>1</sup> 1 & 2 Geo. IV. c. xcv. (local and personal).

<sup>2</sup> 7 Vict. c. xix. (local and personal).

## CHAPTER XVI.

## COMMITTEES OF THE WHOLE HOUSE: AND STANDING COMMITTEES.

A COMMITTEE of the whole house is, in fact, the house itself, presided over by a chairman instead of by the Speaker. It is appointed in the Lords by an order, "That the house be put into a committee," which is followed by an adjournment of the house during pleasure. In the Commons it is appointed by a resolution, that the house will immediately—or on a future day—resolve itself into a committee of the whole house. Under standing order No. 51, whenever an order of the day is read for the house to resolve itself into committee, not being a committee to consider a message from the Crown (see p. 539), or the committee of supply (see p. 474), or the committee on the East India Revenue Accounts (see p. 503), the Speaker leaves the chair without putting any question, unless notice of an instruction (see p. 364) to the committee which is in order has been given. Such an instruction is moved as a distinct question, after the order of the day for the committee has been read, and must be considered before the Speaker leaves the chair, under standing order No. 51.<sup>1</sup> When the order of the day is read for one of the committees excepted from standing order No. 51, the question, "That Mr. Speaker do now leave the chair," has to be proposed, and the general principles which govern debate and amendments apply to such occasions. When the Speaker has left the chair, the mace is removed from the table and placed under it, and the committee commences its sitting.

The chair is taken, in the Lords, by the chairman of committees, who is appointed by a resolution of the house.<sup>2</sup> Pursuant to standing orders Nos. 41 and 42, he takes the chair in all committees of the whole house, and in all committees upon private bills, unless it shall have been otherwise directed by the house; and if he, or

Mode of  
appoint-  
ment.

S. O. 51,  
Appendix  
I.

Chairman  
of Lords'  
commit-  
tee.

<sup>1</sup> If the member who has given notice of an instruction be not present when the order of the day is read, the Speaker leaves the chair forthwith, Elector's Qualifica-

tion and Registration Bill, 26th May, 1892.

<sup>2</sup> 42 L. J. 636, 653; 118 ib. 180; 137 ib. 21; 143 ib. 173.

any lord appointed by the house in his place, shall be absent (unless by leave of the committee), the house is resumed. The committee cannot proceed to business unless a chairman is appointed by the house, but another chairman is usually appointed before the house goes into committee, or for the whole day.<sup>1</sup>

Chairman  
of com-  
mittees  
in the  
Commons.

In the Commons the chair (at the table) is generally taken by the chairman of the committee of ways and means<sup>2</sup> or in his absence by the deputy chairman.

Appoint-  
ment of  
chairman.

The chairman of ways and means was formerly appointed at the beginning of a new Parliament, when the house resolved itself for the first time into the committee of supply, by the leader of the house, or a minister of the Crown in his behalf, calling upon a member to take the chair of the committee;<sup>3</sup> but in 1910 the chairman of ways and means was appointed by a motion made by the prime minister as soon as the usual sessional orders (see p. 162) had been made on the day on which the King's speech for opening Parliament was delivered, and a similar course was followed when a vacancy occurred in the following session.<sup>4</sup> If the appointment is sought to be made in committee and a difference should arise therein concerning the election of a chairman, the matter must be determined by the house itself. The Speaker at once resumes the chair; and a motion being made, "That A B do take the chair of the committee," the Speaker puts the question, which being agreed to, the mace is again removed from the table, and the house resolves itself into committee.<sup>5</sup>

<sup>1</sup> 80 L. J. 125. 406; 81 ib. 233; 88 ib. 38; 95 ib. 106; 103 ib. 12, &c. For cases in which peers have been appointed to act as chairman of committees, in the absence of the chairman from illness, see 103 L. J. 15; 106 ib. 77; 120 ib. 180; 136 ib. 33; 143 ib. 20. 164. 167. See also ib. 128.

<sup>2</sup> This usage began in 1841. Until that time the chair of committees of the whole house was taken by a member appointed by the call of the committee, or, if the call was disputed, by the vote of the house, 59 H. D. 3 s. 606.

<sup>3</sup> 155 C. J. 417; 160 ib. 256; 161 ib. 36.

<sup>4</sup> 165 C. J. 6; 166 ib. 7. 436.

<sup>5</sup> 19th Jacobi, a dispute being in the committee, which of two members named should go to the chair, the Speaker was called to his chair, and put the question, that Sir Edward Coke (who was one of the persons named) should take the chair, and then the Speaker left his chair. Mem-

orials of the Method. &c., of Proceedings in Parliament, by H. S. E. C. P., 1658, p. 37; 1 C. J. 650; 9 ib. 386; 13 ib. 794; 21 ib. 255; 40 ib. 1126, &c.; 3 Grey, Deb. 301. Two members having been successively called upon to take the chair of the committee of ways and means, 2nd Feb. 1810, the Speaker immediately returned to the chair to submit the question to the house, 65 C. J. 30, 15 H. D. 1 s. 302. Mr. Playfair having resigned the office, Sir Arthur Otway was called to the chair, 2nd March, 1883, when a member rose to address the committee. Mr. Speaker thereupon resumed the chair; and upon question it was ordered that Sir Arthur Otway do take the chair of the committee, 138 C. J. 63, 276 H. D. 3 s. 1321. See also the proceedings on the appointment of Mr. Jeffreys as deputy chairman, 157 C. J. 65, 103 Parl. Deb. 4 s. 56.

The chairman so appointed continues in office for the remainder of the Parliament.<sup>1</sup> As has been already stated (see p. 181) he also acts as deputy Speaker, and executes various duties in connection with private bills (see pp. 626, 644, 662, 667, 699). Duties of chairman.

If the chairman of ways and means resigns the chair during the sitting of Parliament, he usually announces his retirement to the house, when observations are made by the ministerial and opposition leaders.<sup>2</sup> Retirement of chairman of ways and means.

In addition to the chairman of ways and means, the house has power under standing order No. 81 to appoint a deputy chairman who, whenever the chairman of ways and means is absent from the chair, is entitled to exercise all the powers vested in the chairman of ways and means, including his powers as deputy Speaker. In the appointment of the deputy chairman the procedure adopted in the case of the chairman of ways and means is followed.<sup>3</sup> Appointment of deputy chairman.

In the absence of the chairman of ways and means and the deputy chairman the chair of a committee of the house is usually taken by a member, on the suggestion of a member of the government, or otherwise, without question on the part of the house; though in such a case preference is given to one of those five members whom, in pursuance of the provision contained in standing order No. 1, the Speaker nominates at the commencement of every session to act as temporary chairmen of committees, when requested to do so by the chairman of ways and means. During prolonged sittings of a committee it has also been customary for the chairman to withdraw, and to be replaced by another member, without any question.<sup>4</sup> Temporary chairmen.  
In a committee of the whole house, it is customary for the clerk assistant to officiate as Clerk. S. O. 1, Appendix 1.

The proceedings in committee are conducted in the same manner as when the house is sitting. In the Lords a peer addresses himself to their lordships as at other times; in the Commons a member addresses the chairman, who performs in committee all the duties Conduct of business.

<sup>1</sup> His salary, first paid out of the civil list, then voted on address, is included among the annual estimates, 55 C. J. 790; 8 H. D. 1 s. 228; see also Parl. Pap. (H. C.) sess. 1852-3, No. 478.

<sup>2</sup> Colonel Wilson Patten, 5th April, 1853, 125 H. D. 3 s. 591; Mr. Dodson, 8th April, 1872, 210 ib. 892; Mr. Lyon Playfair, 1st March, 1883, 276 ib. 1247. In session 1911 Mr. Emmott announced his

resignation by a letter addressed to the Speaker, 166 C. J. 436.

<sup>3</sup> On going into committee of supply, 157 C. J. 65; 161 ib. 39; other committees, 160 ib. 261; 165 ib. 24; on motion in the house, 166 ib. 7. 442.

<sup>4</sup> 132 C. J. 395; 137 ib. 322, &c. Also in cases when the chairman leaves the chair temporarily, 142 Parl. Deb. 4 s. 262.

which devolve upon the Speaker in the house. He calls upon members as they rise to speak, puts the questions, maintains order, and gives the casting vote in case of an equality of voices (see p. 333).

General  
functions  
of com-  
mittees of  
the whole  
house.

The ordinary function of a committee of the whole house is deliberation, and not inquiry. All matters concerning the imposition of taxes, or the grant of public money, must be considered in the committees of supply or ways and means or other committees of the whole house (see pp. 456, 471) as a preliminary to legislation; and any other questions which, in the opinion of the house, may be more fitly discussed in committee, are dealt with in that manner.<sup>1</sup> The provisions of public bills also are in some cases considered in a committee of the whole house (see p. 362).

Inquiries  
by com-  
mittees of  
the whole  
house.

In former times, important inquiries were entrusted to committees of the whole house,<sup>2</sup> and witnesses were examined at the bar. Such a tribunal is, however, ill adapted to close and consecutive examinations, while the time occupied by its inquiries is a serious impediment to the general business of the session,<sup>3</sup> and of late years no such inquiries have been referred to committees of the whole house. The investigation of matters of equal importance has been more satisfactorily entrusted to select and secret committees (see p. 424).<sup>4</sup>

Addition  
by in-  
struction  
to matters  
referred to  
commit-  
tee.

A committee can only consider those matters which have been committed to them by the house. If it be desirable that other matters should also be considered, an instruction is given by the house, to empower the committee to entertain them (see p. 364).<sup>5</sup>

<sup>1</sup> National Education, 6th March, 1856, 111 C. J. 87, 140 H. D. 3 s. 2015; Government of India Bill deferred, and resolutions referred to a committee of the whole house, 1858, 113 C. J. 135, 149 H. D. 3 s. 2016; Relations between the two houses and duration of Parliament, 1910, 165 C. J. 71. See also the Speaker's ruling, 17th July, 1905, that resolutions dealing with the redistribution of seats should be considered in a committee of the whole house, 149 Parl. Deb. 4 s. 897.

<sup>2</sup> Miscarriage of the fleet before Toulon, 1744, 24 C. J. 773; want of success of naval forces during American War, 1782, 38 ib. 644; conduct of the Duke of York, 1809, 64 ib. 15; Expedition to the Scheldt, 1810, 65 ib. 14; Operation of Orders in Council, 1808, 1812, 63 ib. 199; 67 ib. 333.

<sup>3</sup> In 1790, committees of the whole house on the African slave-trade were assisted in their inquiries by select committees appointed to take the examination of witnesses, and report the minutes of evidence to the house, 45 C. J. 11; 46 ib. 149.

<sup>4</sup> War in the Carnatic, 1781, 58 C. J. 430. 435; Victualling the Navy, 1782, 58 ib. 871; Naval Inquiry, 1805, 60 ib. 214. 413; Army before Sebastopol, 1855, 110 ib. 36; and see debate on its appointment, 136 H. D. 3 s. 979. 1121.

<sup>5</sup> See the Speaker's ruling, 24th February, 1860, that in committee on the Customs Acts resolutions dealing with the proposed Commercial Treaty with France would not be in order without the reference of the treaty to the committee, 156 H. D. 3 s. 1720.

The main difference between the proceedings of a committee and those of the house is that in the former a member is entitled to speak more than once, in order that the details of a question or bill may have the most minute examination; or, as it is expressed in the Lords' standing order No. 40, "to have more freedom of speech, and that arguments may be used *pro et contra*;" though it cannot be denied that an unrestricted right of debate offers special opportunities for delay and obstruction. Members must speak standing and uncovered, as when the house is sitting;<sup>1</sup> although it appears that, in earlier times, they were permitted to speak either sitting or standing.<sup>2</sup> A motion for the "previous question" (see p. 252) is not admitted in a committee of the whole house.

Order in debate in a committee is enforced by the chairman, who is responsible for the conduct of business therein; and from his decision no appeal should be made to the Speaker,<sup>3</sup> nor should an appeal from the decision of the deputy chairman<sup>4</sup> or a temporary chairman<sup>5</sup> be made to the chairman of ways and means on his resuming the chair. Except when a temporary chairman is in the chair, the rules regulating the closure of debate are as operative in a committee as in the house itself (see p. 313), and are enforced in the same manner. The rules observed by the house regarding order in debate are followed in committee. As reference to debate in committee is not permitted in the house (see p. 290), reference in

Procedure  
in com-  
mittee.

Authority  
of chair-  
man.

S. O. 26,  
Appendix  
I.

<sup>1</sup> 248 H. D. 3 s. 406.

<sup>2</sup> In a committee on a subsidy, 7th Nov. 1601, Sir Walter Raleigh was interrupted by Sir E. Hobby, who said, "You should speak standing, that so the house might the better hear you." Raleigh replied, "that being a committee, he might either speak sitting or standing." Mr. Secretary Cecil rose next, and said, "Because it is an argument of more reverence, I chuse to speak standing." 1 Parl. Hist. 916.

<sup>3</sup> 156 H. D. 3 s. 1474; 170 ib. 109; 176 ib. 31; 332 ib. 1011; 339 ib. 1359; 9 Parl. Deb. 4 s. 975; 98 ib. 978; 99 ib. 365; 135 ib. 722; 48 H. C. Deb. 5 s. 749. During the session of 1836, when the new method of taking divisions was still unfamiliar, progress was reported by a committee to take thereon the instruction of the house, 91 C. J. 104; in the session of 1855, doubts having arisen in a committee regarding the right of certain members to vote, the

chairman, after the house was resumed, submitted the matter to the consideration of the Speaker, 110 C. J. 352, 139 H. D. 3 s. 486; and on 3rd July, 1912, the Speaker ruled on a question which had arisen in connection with divisions in a committee. He pointed out on the following day that though he was not a Court of Appeal from the chairman, yet it might sometimes be desirable that he should give general guidance with regard to the construction of a standing order, 40 H. C. Deb. 5 s. 1275. 1338. On 6th May, 1853, upon a report of progress, a point of order in debate was submitted to the judgment of the Speaker, who gave his decision thereon, 126 H. D. 3 s. 1243. For the Speaker's statement regarding procedure by a chairman of a standing committee, see p. 422.

<sup>4</sup> 157 Parl. Deb. 4 s. 731.

<sup>5</sup> 18 Parl. Deb. 4 s. 1875-83.

S. O. 19,  
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I.

committee to the conduct of the Speaker is not allowed :<sup>1</sup> nor can the enforcement of closure at a previous sitting of the committee be discussed.<sup>2</sup> By standing order No. 19 (see p. 281), the chairman is empowered to check irrelevance or tedious repetition in debate. The rule that a member who has used objectionable words must explain or retract the same, or offer an apology (see p. 298), is as operative in committee as in the house. A division which, in the opinion of the chairman, is frivolously or vexatiously claimed can be dealt with by him in pursuance of standing order No. 30 (see p. 335).

S. O. 30,  
Appendix  
I.

Disorder  
in com-  
mittee.

S. O. 20,  
Appendix  
I.

The chairman possesses the power given to the Speaker by standing order No. 20 (see p. 303), of directing a member whose conduct is grossly disorderly to withdraw immediately :<sup>3</sup> but the conduct of disorderly members, with this exception, and the suspension of members on the chairman's report (see p. 302), are considered with the Speaker in the chair. The house is therefore resumed on account of words of heat or disputes between members, or when words have been taken down to be reported to the house.<sup>4</sup> On an occasion, 28th July, 1887, when insulting words were addressed by one member to another during the progress of a division, the chairman stated after the declaration of the numbers, that he must, in consequence, send for the Speaker. The Speaker accordingly resumed the chair; the chairman reported to him the occurrence; and the Speaker, after a statement from the member, named him for having violated the decorum of the house.<sup>5</sup> A chairman at the close of the proceedings in the house on the suspension of certain members in consequence of his report of their obstruction in committee, has also reported that a member had addressed insulting words to him in the committee, and the matter was set down for consideration on a future day.<sup>6</sup> The sitting of a committee may also be interrupted by a complaint of a breach of privilege whereon progress is reported, and the incident is considered by the house.<sup>7</sup>

Resump-  
tion of the  
chair by

If an occasion of public business arises in which the house is concerned, as, for example, if the usher of the Black Rod should

<sup>1</sup> 248 H. D. 3 s. 61.

<sup>2</sup> 323 H. D. 3 s. 1446.

<sup>3</sup> 148 C. J. 428.

<sup>4</sup> Report of cases of disorder : 10 C. J. 806; 11 ib. 480; 43 ib. 467; 106 ib. 333; 107 ib. 278. Report of words taken down : 1 ib. 866; 18 ib. 653; 106 ib. 313; 108 ib. 461; 132 ib. 375; 148 ib. 469.

Report of members for disregarding the authority of the chairman : 136 ib. 111; 145 ib. 72; 156 ib. 62, 90 Parl. Deb. 4 s. 691; 159 C. J. 389; 163 ib. 404; for obstruction : 137 ib. 323.

<sup>5</sup> 142 C. J. 407, 318 H. D. 3 s. 442.

<sup>6</sup> 137 C. J. 323, 328, 271 H. D. 3 s. 1272.

<sup>7</sup> 143 C. J. 483.



summon the house to attend his Majesty or the lords commissioners Mr. Speaker without report of progress. in the House of Peers, the Speaker resumes the chair at once, without any report from the committee. When the incident which has occasioned the interruption to the sitting of a committee has been dealt with, the house forthwith again resolves itself into the committee.<sup>1</sup>

An outbreak of disorder in a committee, by which the honour and dignity of the house were affected, has justified the Speaker in resuming the chair immediately, without awaiting the ordinary forms.<sup>2</sup> On the 10th May, 1675, a serious disturbance arose in a committee of the whole house, which threatened bloodshed; the Speaker, thereupon, "very opportunely and prudently rising from his seat near the bar, in a resolute and slow pace, made his three respects through the crowd, and took the chair." The mace was laid upon the table; the disorder ceased; and the Speaker stated that it was to bring the house into order again, that, "though not according to order," he had taken the chair. No other entry appears in the journal than that "Mr. Speaker resumed the chair:" but the same report adds that, though "some gentlemen excepted against his coming into the chair, the doing it was generally approved, as the only expedient to suppress the disorder."<sup>3</sup> This incident has not been repeated, for subsequently when a member who had been ordered into custody for disorderly conduct, returned into the house, during the sitting of a committee, in a violent and disorderly manner, upon a report of progress, the Speaker resumed the chair, and ordered the Serjeant to do his duty.<sup>4</sup> So also, when during the sitting of the committee on the Corn Bill, 6th March, 1815, tumultuous proceedings took place outside, and one member complained that the house was surrounded by a military force, and another that he had been beset by a mob, the Speaker resumed the chair, on the report of progress, and, the matter having been considered, the committee was resumed.<sup>5</sup>

It is not necessary to give notice of the express terms of resolutions intended to be proposed in committee of the whole house.<sup>6</sup> A motion or amendment in committee does not need a seconder. Motions for resolutions in committee.

<sup>1</sup> 126 C. J. 433; 162 ib. 305; 168 ib. 41; 169 ib. 451; 170 ib. 144. 164; 171 ib. 21. 38. 165. 173. When the time had come for holding a conference with the Lords, 67 ib. 431.

<sup>2</sup> 1 C. J. 837.

<sup>3</sup> 3 Grey, Deb. 129.

<sup>4</sup> Mr. Fuller's case, 27th Feb. 1810, 65 C. J. 134.

<sup>5</sup> 70 C. J. 143; Colchester, ii. 531.

<sup>6</sup> Navigation Laws, 15th May, 1848; Sardinian Loan, 12th June, 1856. See also p. 478 as to notice given of business to be taken in committee of supply.

out of the Consolidated Fund ; and on the 4th April, the resolution for the continuance of the income tax was again proposed, and agreed to.<sup>1</sup> On the 28th April, 1853, a resolution was proposed upon the income tax, and progress reported. The committee sat again the same day, when, instead of resuming the discussion upon that resolution, another resolution was proposed upon exchequer bills ; and on the 29th April, the resolution upon the income tax was again proposed.<sup>2</sup> A similar course is followed in committee of supply.<sup>3</sup> When a motion, which has been considered in committee but not disposed of, is again submitted to the committee, the chairman proposes the question thereon disengaged from any amendment which may have been already proposed thereto, as the renewal of the amendment proposed on the previous occasion is left to the option of the committee.<sup>4</sup> Accordingly a member cannot claim to speak first on the renewal of a debate in committee, on the ground that he was in possession of the committee, when the chairman had reported progress.<sup>5</sup>

Motions to report progress, &c. It is the practice for members who desire to close the sitting of a committee, to move that the " chairman do report progress, and ask leave to sit again," in order to put an end to the proceedings of the committee on that day, this motion, in committee, being analogous to that frequently made at other times, for adjourning the debate. A motion, " That the chairman do now leave the chair," when carried, supersedes the order of the day for a committee, and converts it into a dropped order ; as in this case, when the Speaker resumes the chair, no report whatever is made from the committee.<sup>6</sup> The same result is obtained if, when the chairman reports progress in the matter referred to the committee, he refrains, upon a direction given by the member who had obtained the appointment of the committee, from asking leave to sit again.<sup>7</sup> A motion to report progress, having been negatived, cannot be repeated during the pendency of the same question, being subject to the same rule as that observed in the house itself, which will not admit of a motion for the adjournment of the debate to be repeated, without some intermediate proceeding (see p. 251). It has, therefore, been customary to alternate

<sup>1</sup> 106 C. J. 57. 104. 145.

<sup>2</sup> 108 C. J. 442. 446.

<sup>3</sup> 280 H. D. 3 s. 1713.

<sup>4</sup> 319 H. D. 3 s. 1629 ; 133 Parl. Deb.

<sup>5</sup> s. 1530.

<sup>6</sup> 150 H. D. 3 s. 1618 ; 69 H. C. Deb. 5

s. 600.

<sup>7</sup> 86 C. J. 403 ; 89 ib. 381. 468 ; 90 ib. 497. 561 ; 117 ib. 177 ; 151 ib. 298 ; 163 ib. 478.

<sup>8</sup> Training Colleges (Ireland) Loans, 146 C. J. 501.

the motion for reporting progress with the motion, "That the chairman do now leave the chair."<sup>1</sup> On the 7th June, 1858, in committee on the government of India, a question for reporting progress having been negatived, the committee, some time afterwards, were prepared to assent to such a motion: but, in order to adhere to the rule, the chairman put the question upon a formal part of an amendment which had been proposed, before he proceeded to put the question for reporting progress.<sup>2</sup>

Resolutions agreed to by a committee are, upon direction from the committee, reported by the chairman to the house; and, until such report has been made, no reference may be made to it or to the proceedings of the committee.<sup>3</sup> Formerly, before the chairman could leave the chair for that purpose, a formal question was put that he "do now leave the chair;" but now, pursuant to the direction given by standing order No. 52, when he has been ordered to make a report to the house, the chairman leaves the chair without question put.

By standing order No. 53, reports from committees of the whole house are brought up without any question being put. Resolutions creating a charge upon the people or authorizing a grant from the public revenue, as is mentioned on p. 459, are considered on a future day: but the report of resolutions upon other matters may be received immediately.<sup>4</sup> The resolutions reported by a committee are twice read before they are agreed to by the house. The first reading is a formal proceeding. The question for the second reading of the resolutions is not according to recent practice proposed from the chair, but each resolution is read successively by the clerk at the table, following the order in which the resolutions were reported to the house.<sup>5</sup> This proceeding is taken to be the second reading of the resolution. The final question is, "That the house doth agree with the committee in the said resolution." The interval before that question is proposed, after the resolution has been read by the clerk at the table, affords the occasion for the proposal of an amendment to the resolution, as an amendment cannot be moved after the question for agreeing with the committee in a resolution has been proposed from the chair.<sup>6</sup> Amendment or debate arising

<sup>1</sup> On the 2nd July, 1877, there were seventeen divisions, in committee of supply, upon such motions, 132 C. J. 312.

<sup>2</sup> 113 C. J. 214, 150 H. D. 3 s. 1688; see also 115 C. J. 323.

<sup>3</sup> 126 H. D. 3 s. 1245.

<sup>4</sup> Established Church (Ireland) Report. 123 C. J. 160.

<sup>5</sup> 73 H. C. Deb. 5 s. 1509.

<sup>6</sup> 195 Parl. Deb. 4 s. 516.

Report of  
resolu-  
tions.

S. O. 52,  
Appendix  
1.

Procedure  
on reso-  
lutions  
reported  
from a  
commit-  
tee.  
S. O. 53,  
Appendix  
1.

upon the consideration of the report of a resolution from a committee must be strictly relevant thereto.<sup>1</sup> Every resolution may be amended,<sup>2</sup> disagreed to,<sup>3</sup> postponed,<sup>4</sup> or recommitted to the committee.<sup>5</sup>

Entry of proceedings in the journals.

In the Commons, the proceedings of committees of the whole house have been entered in the journals since the 23rd February, 1829, when the Speaker submitted to the house that arrangements should be made to effect that object, to which the house assented.<sup>6</sup> In the "Votes and Proceedings," all amendments in committee on bills, upon which divisions arise, are entered: but other amendments are only referred to in general terms.<sup>7</sup> The Lords have more recently adopted a similar form of entry in their journals.

Grand committees.

Since 1832, the annual appointment of the ancient grand committees for religion, for grievances, for courts of justice, and for trade, has been discontinued. They had long since fallen into disuse, and served only to mark the ample jurisdiction of the Commons in Parliament. When they were accustomed to sit, they were, in fact, constituted like committees of the whole house, but sat at times when the house itself was not sitting.<sup>8</sup> The ancient committee of privileges, which was also analogous to a grand committee, has been already dealt with (see p. 89).

Standing committees.

The transaction of public business in the House of Commons was forwarded by the appointment, during the session of 1883, pursuant to resolutions agreed to on the 1st December, 1882, of two standing committees for the consideration of bills relating to law, courts of justice, and legal procedure, and of bills relating to trade, shipping, and manufactures respectively.<sup>9</sup> The resolutions of 1st December, 1882, for the appointment of the standing committees, were made standing orders of the house on the 7th March, 1888, when it was ordered that bills relating to agriculture and fishing should be

<sup>1</sup> 174 H. D. 3 s. 1551; 174 Parl. Deb. 4 s. 1697; 195 ib. 516; 73 H. C. Deb. 5 s. 205; 80 ib. 2294.

<sup>2</sup> 112 C. J. 227; 119 ib. 333.

<sup>3</sup> 75 C. J. 379; 76 ib. 440; 95 ib. 169.

<sup>4</sup> 77 C. J. 314; 83 ib. 509.

<sup>5</sup> 77 C. J. 314; 119 ib. 122. Resolutions which have been recommitted to a committee of the whole house, and reported, have been again recommitted, 83 ib. 533.

<sup>6</sup> 84 C. J. 78.

<sup>7</sup> 191 H. D. 3 s. 574; 110 Parl. Deb. 4 s. 1073; 178 ib. 1371; 191 ib. 778.

<sup>8</sup> 1 C. J. 220. 822. 843. 873. 1042, &c.;

2 ib. 3. 120. 153. 202. 321, &c.; Lex Parl. 335; Scobell, 35-38; 4 Rushworth, Col. 19; see also Colchester, iii. 481.

<sup>9</sup> The appointment of standing committees was an attempt to meet the demand made upon the time of the house by the consideration of bills in a committee of the whole house. For example, in 1879, the committee on the Army Discipline and Regulation Bill held twenty-two sittings; in 1881, the committee on the Irish Land Bill thirty-nine sittings, and the Prevention of Crime (Ireland) Bill, thirty-one sittings.

deemed bills relating to trade. These standing committees continued to be appointed until the session of 1907, when the standing orders relating thereto were amended so as to provide for the appointment of four standing committees which should consider such bills or parts of bills as might be committed to them (see p. 362).

One of these standing committees is appointed for the consideration of all public bills relating exclusively to Scotland and committed to a standing committee, and consists of all the members representing Scottish constituencies, with not more than fifteen other members to be nominated in respect of any bill by the committee of selection, who have regard in such nomination to the approximation of the balance of parties in the committee to that in the whole house.<sup>1</sup>

Constitution of standing committee on Scottish Bills.  
S. O. 47 (2), Appendix I.

The other three standing committees consist of not less than sixty, nor more than eighty, members, nominated by the committee of selection (see p. 660) who are in their nomination to have regard to the classes of bills committed to such committees, the composition of the house and the qualifications of the members selected. When a public bill relating exclusively to Wales and Monmouthshire is committed to a standing committee, the committee must be so constituted as to comprise all the members sitting for constituencies in Wales and Monmouthshire.

Constitution of the other standing committees.  
S. O. 48, Appendix I.

The committee of selection has the power of adding not more than fifteen members to each of the standing committees, including the committee on Scottish bills, in respect of any bill referred to it, to serve on the committee during the consideration of such bill.<sup>2</sup>

Nomination of additional members.

The committee also has the power of discharging the members appointed to serve on the standing committees (except the members for Scottish constituencies on the standing committee on Scottish bills) for non-attendance or at their own request,<sup>3</sup> and of appointing other members in substitution for them.

Discharge of members.

The committee of selection also nominates a chairmen's panel,

Chairmen's panel.

<sup>1</sup> A standing committee, similarly constituted, had been appointed in sessions 1894 and 1895 for the consideration of all bills introduced by a minister of the crown relating exclusively to Scotland, which might by order of the house be committed to it, 149 C. J. 106; 150 ib. 232. For a proposal to commit a bill relating to London to a committee of all the members representing London constituencies and fifteen members nominated by the committee of selection, see 149 ib. 318.

<sup>2</sup> The Speaker has deprecated criticism in the house of the nomination of members by the committee of selection, 159 Parl. Deb. 4 s. 953.

<sup>3</sup> As to a proposal by a chairman of a standing committee to report members to the committee of selection for non-attendance and a resolution of the committee of selection limiting the conditions under which it would discharge members from standing committees, see 63 H. C. Deb. 5 s. 1812.

S. O. 49,  
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I.

consisting of not less than four, nor more than eight members, of whom three are the quorum; and the chairmen's panel appoint from among themselves the chairman of each standing committee, and may change the chairman, so appointed, from time to time. Any member of the chairmen's panel is empowered to ask any other member of the panel to take his place for any day or part of a day if the need should arise.<sup>1</sup>

Pre-  
cedence  
of bills.

S. O. 47  
(4), Ap-  
pendix I.

Days and  
hours of  
sitting.

In all but one of the standing committees precedence is given to government bills. The committee in which precedence is given to the bills of unofficial members is designated by the committee of selection.<sup>2</sup>

The standing committees sit usually on two days in the week at half-past eleven o'clock. The days of sitting are fixed informally, and at the end of a sitting the chairman adjourns the committee to the next day on which it sits normally. Motions have been made, however, in a standing committee to alter the day of its next sitting<sup>3</sup> and the hour of meeting.<sup>4</sup> Standing committees cannot sit whilst the house is sitting, except in pursuance of a resolution of the committee, moved by the member in charge of the bill before the committee, and decided without amendment or debate,<sup>5</sup> and cannot sit after four p.m., without the order of the house. Such an order is obtained before the commencement of public business, or after its conclusion, upon a motion, made without notice, by the chairman, or by a member in his behalf.<sup>6</sup>

<sup>1</sup> Resolutions of the chairmen's panel, 157 C. J. 90; 166 ib. 446. Mental Deficiency and Lunacy (Scotland) Bill, Parl. Pap. (H. C.), sess. 1913, No. 230, p. 8. In the absence of its chairman the panel can be convened at the request of any two of its members, 165 C. J. 48.

<sup>2</sup> 162 C. J. 136. In session 1914 the Superannuation (Ecclesiastical Commission and Queen Anne's Bounty) Bill, which had been introduced by an unofficial member and was practically unopposed, was considered in standing committee B in which government bills had precedence, before a government bill on the day on which they were both appointed, by arrangement with the minister in charge of the government bill.

<sup>3</sup> Marriage with a Deceased Wife's Sister Bill, Parl. Pap. (H. C.), sess. 1903, No. 218, p. 12.

<sup>4</sup> Small Landholders (Scotland) Bill,

Parl. Pap. (H. C.), sess. 1907, No. 278, p. 23.

<sup>5</sup> Such a motion is made at any time during the sitting of a committee, 25 H. C. Deb. 5 s. 42, and proceedings on an amendment have been interrupted for the purpose, Patents and Designs Bill, Parl. Pap. (H. C.) sess. 1907, No. 177, p. 17; Mental Deficiency Bill, Parl. Pap. (H. C.) sess. 1913, No. 202, p. 26.

<sup>6</sup> 151 C. J. 160, 39 Parl. Deb. 4 s. 1362. Orders so obtained have referred to the day upon which they were made, 158 C. J. 342, etc. or a subsequent day, 168 C. J. 290, 308, or to every day on which the committee might sit until the conclusion of a specified bill, 150 ib. 209; 151 ib. 113; 152 ib. 229; 153 ib. 112; 154 ib. 162; 156 ib. 256. Standing committees have also been enabled to sit on future days during the sitting of the house until the conclusion of a bill upon a motion

The procedure of select committees is, by standing order No. 47, made applicable to standing committees, unless the house otherwise orders. Procedure in standing committees.

Members have the right of access, as in the case of select committees (see p. 431), to the room occupied by a standing committee; and strangers are admitted, except when the committee shall order them to withdraw. Admission of strangers.

The chairman in a standing committee, as in a select committee (see p. 433), can only vote when there is an equality of voices.<sup>1</sup> Chairman's vote.

As is the rule regarding all committees, a motion for the previous question would be out of order in a standing committee. Previous question.

The quorum of a standing committee is twenty, and until that number is present, the committee cannot proceed to business.<sup>2</sup> It is the duty of the clerk attending the committee, as in a select committee, to call the attention of the chairman to the fact when the number of members present falls below that number, whereupon the chairman must suspend the proceedings until a quorum be present or adjourn the committee to some future day.<sup>3</sup> Quorum.  
S. O. 5.  
47, 62,  
Appendix  
I.

The doors of the room in which a committee sits are locked during a division, and following the rule adopted by the house in 1906 (see p. 329) a member is not compelled to vote although he is present when the question is put.<sup>4</sup> A claim by members to alter their votes after the numbers have been declared from the chair on the ground that they had voted under a misapprehension has been refused. A standing committee has also the power of determining the question of a personal interest in a vote.<sup>5</sup> Divisions.

In session 1907 the rules applicable to the closure of debate, made (with notice) at the commencement of public business by a minister of the crown, 147 ib. 269; 151 ib. 167; 155 ib. 310; 164 ib. 437. The standing committee to which Part II. of the National Insurance Bill was committed in 1911 was empowered, without any resolution of the committee, to sit whilst the house was sitting and, if the committee so determined, to sit on any day after 4 p.m. without an order of the house, 166 C. J. 440. On 20th July, 1904, the standing committee on trade met, but adjourned immediately, as the sitting of the house of the previous day had not been concluded. Closure of debate, &c.

made (with notice) at the commencement of public business by a minister of the crown, 147 ib. 269; 151 ib. 167; 155 ib. 310; 164 ib. 437. The standing committee to which Part II. of the National Insurance Bill was committed in 1911 was empowered, without any resolution of the committee, to sit whilst the house was sitting and, if the committee so determined, to sit on any day after 4 p.m. without an order of the house, 166 C. J. 440. On 20th July, 1904, the standing committee on trade met, but adjourned immediately, as the sitting of the house of the previous day had not been concluded.

<sup>1</sup> When the chairman states his reasons for his vote they are entered on the Minutes of Proceedings, Parl. Pap. (H. C.), sess.

1905, No. 154, p. 9.

<sup>2</sup> Mental Deficiency Bill, Parl. Pap. (H. C.), sess. 1912-13, No. 385, p. 46.

<sup>3</sup> As to the effect of the absence of a quorum upon the validity of a committee's proceedings, see 177 Parl. Deb. 4 s. 716.

<sup>4</sup> Marriage with a Deceased Wife's Sister Bill, Parl. Pap. (H. C.), sess. 1907, No. 87, p. 10. When it would appear from the result of a division that a quorum of the committee was not present, the names of those members who being present did not vote are entered in the minutes, Employment of Children Bill, and Criminal Law Amendment (White Slave Traffic) Bill, Parl. Pap. (H. C.), sess. 1912-13, No. 200, p. 7, and No. 255, p. 18.

<sup>5</sup> 99 C. J. 447.

*S. O. 47 (5), Appendix I.* (see p. 313) which had hitherto been confined to the house itself and committees of the whole house, were extended to the standing committees with the substitution of twenty for one hundred as the number of members required to vote in the majority to make the motion for the closure effective.<sup>1</sup> The provisions of standing order No. 26 (3) with regard to the selection of amendments have not been extended to standing committees.<sup>2</sup> The powers given to the chair under standing order No. 19 with reference to tedious repetition of arguments or irrelevance (see p. 281) and under standing order No. 23 with regard to dilatory motions in abuse of the rules of the house (see p. 282), were also conferred upon the chairman of a standing committee in session 1907.<sup>3</sup>

*Clauses imposing a charge.* Like a committee of the whole house a standing committee cannot consider clauses imposing a charge on the public or on public funds unless the charge has been sanctioned by the necessary resolution of a committee of the whole house agreed to by the house (see p. 458). When a standing committee has considered such a clause before the necessary resolution has been agreed to by the house, the Speaker has directed that the bill must be recommitted to the standing committee in respect of the clause improperly considered by it.<sup>4</sup>

*Notices of amendments, minutes, &c.* Notices of amendments to a bill committed to a standing committee given in the house are printed and circulated with the "Votes," and stand referred to the committee, although the member who gives the notice is not a member of the committee; but such amendments

<sup>1</sup> 162 C. J. 121. Motion for closure failed, insufficient majority, Mental Deficiency and Lunacy (Scotland) Bill, Parl. Pap. (H. C.), sess. 1913, No. 230, pp. 18, 25, 28.

<sup>2</sup> In committing the National Insurance Bill Part II. to a standing committee in session 1911, standing order 26 (3) was extended to the standing committee for the purposes of that bill, 166 C. J. 440.

<sup>3</sup> Before the application of these standing orders to proceedings in standing committees, it was held that the chairman possessed an inherent right, when he saw that the transaction of business was becoming impossible, to shorten discussion, 10 Parl. Deb. 4 s. 912. Thus chairmen of standing committees, when they considered that an amendment had been discussed adequately, had proceeded to put the question thereupon without allowing further debate, Clergy Discipline (Im-

morality) Bill, sess. 1892, and Places of Worship Enfranchisement Bill, sess. 1893, 10 Parl. Deb. 4 s. 911; Marriage with a Deceased Wife's Sister Bill, Parl. Pap. (H. C.), sess. 1903, No. 218, p. 8; Compensation for Damage to Crops Bill, Parl. Pap. (H. C.), sess. 1905, No. 97, p. 7. They had also declined to accept a motion for the adjournment of the committee, Aliens Bill, Parl. Pap. (H. C.), sess. 1904, No. 242, p. 12; Labourers' (Ireland) Bill, Parl. Pap. (H. C.), sess. 1904, No. 284, p. 9; Compensation for Damage to Crops Bill, Parl. Pap. (H. C.), sess. 1905, No. 97, p. 7; Trades Unions and Trade Disputes Bill, Parl. Pap. (H. C.), sess. 1905, No. 154, p. 20; or had put the question on such a motion without permitting debate, Marriage with a Deceased Wife's Sister Bill, 18th May, 1903.

<sup>4</sup> 162 C. J. 196, 174 Parl. Deb. 4 s. 1068, 177 ib. 716.



cannot be considered unless they are moved by a member of the committee. Members address the chair standing; amendments are proposed under the rules in force in the house; and the minutes of proceedings which include a record of any division are printed and circulated.<sup>1</sup> Petitions are not received by a standing committee.<sup>2</sup>

In accordance with instructions given to them by the house standing committees have consolidated bills committed to them into one bill<sup>3</sup> and have extended the provisions of a bill to other parts of the United Kingdom.<sup>4</sup>

It is the duty of standing committees, as of all committees, to give to the matters referred to them due and sufficient consideration. During the session of 1890, this matter was considered by the chairman's panel, who arrived at the opinion that, in the case of a bill committed to a standing committee, if, before the committee had proceeded to consider the bill, or until some reasonable attempt to deal with the bill had been made, a motion was made to the effect that the committee decline to proceed with the bill, such a motion would be an improper motion, which the chairman should decline to accept.<sup>5</sup>

When, however, a committee has made progress with a bill and circumstances have arisen which render further progress undesirable a motion has been accepted from the member in charge of the bill, "That the committee do not proceed further with the bill."<sup>6</sup> If

<sup>1</sup> 163 C. J. 83. The minutes of proceedings are circulated after each sitting of the committee and at the conclusion of each bill are reported to the house. In the case of Part II. of the National Insurance Bill in session 1911, the proceedings of the standing committee were reported verbatim in the Official Report of Debates, 31 H. C. Deb. 5 s. 1637.

<sup>2</sup> Aliens Bill, Parl. Pap. (H. C.), sess. 1904, No. 242, p. 18.

<sup>3</sup> 145 C. J. 465; 146 ib. 331; 156 ib. 351; 158 ib. 296.

<sup>4</sup> 158 C. J. 120.

<sup>5</sup> This resolution was formed with reference to the Companies (Winding-up) Bill, it having been intimated to the chairman that, at the first meeting of the committee, a motion might be made that the committee should decline to proceed with the consideration of the bill.

<sup>6</sup> Criminal Code (Indictable Offences Procedure) Bill, Parl. Pap. (H. C.), sess. 1883, No. 225, p. 55; Plumbers Registration Bill,

Parl. Pap. (H. C.) sess. 1893-4, No. 347, p. 8; Aliens Bill, and Labourers (Ireland) Bill, Parl. Pap. (H. C.), sess. 1904, No. 242, p. 18, and No. 284, p. 15; Education Acts (Single School Areas) Bill, and Market Gardeners Compensation (No. 2) Bill, Parl. Pap. (H. C.), sess. 1912-13, No. 105, p. 14, and No. 390, p. 7; Dogs (Protection) Bill, Parl. Pap. (H. C.), sess. 1913, No. 223, p. 14; Dogs Bill, Parl. Pap. (H. C.), sess. 1914, No. 313, p. 10. A similar motion made by the member in charge of the Trades Unions and Trade Disputes Bill was negatived, Parl. Pap. (H. C.) sess. 1905, No. 154, p. 20. In the case of the Meat Marking (Ireland) Bill in session 1902, as the proceedings of the Standing Committee on Trade, to whom the bill was committed, were brought to a close on one occasion by the absence of a quorum, and could not be resumed at the next meeting of the committee for the same reason, a motion was made (with notice) in the house by the member in charge of the bill for

Instructions.

Report of bills before consideration completed.

Report of a bill in an incomplete state.

such a motion is agreed to, the bill is ordered to be reported so far as amended to the house.<sup>1</sup> When a member who was not in charge of the bill has attempted to make a similar motion the chairman has held that the motion was out of order.<sup>2</sup> In the case of the Housing of the Working Classes Bill in session 1913 a motion was made by the member in charge of the bill before its consideration was begun "That the committee do not proceed with the bill," and, the motion being agreed to, the bill was reported without amendment to the house.<sup>3</sup> In session 1907 at the beginning of the proceedings on the Coal Mines (Eight Hours) Bill, which was an unofficial member's bill, a member of the government was allowed to move "That the committee do report the bill without amendment to the house." In making the motion he announced the intention of the government to introduce an alternative bill so soon as a departmental committee on the subject should have reported. The standing committee reported the bill without amendment to the house and made a special report to the effect that they were unable to proceed with the bill owing to the inadequate information at their disposal. The Speaker, while upholding the action of the committee in this case, stated that the practice was one which ought to be very carefully watched.<sup>4</sup>

Following the principle which governs procedure in committees of the whole house, no appeal can be made to the Speaker regarding the decisions and rulings of a chairman of a standing committee.<sup>5</sup>

Under standing order No. 50, a bill reported from a standing committee is proceeded with as if it had been reported from a committee of the whole house, and need not, therefore, be recommitted, but all bills reported from a standing committee, whether amended or not, must be considered on report by the house. When the order of the day for the consideration of such a bill is read, no question is put,

discharging the order referring the bill to the standing committee, and, on this being agreed to, the bill was withdrawn, 157 C. J. 378. A similar course was adopted in the case of the Industrial Assurance Bill, 146 C. J. 376.

<sup>1</sup> 138 C. J. 301; 148 ib. 466; 159 ib. 297, 356; 167 ib. 122, 448; 169 ib. 302.

<sup>2</sup> Clergy Discipline (Immorality) Bill, 23rd May, 1892.

<sup>3</sup> 168 C. J. 109, Parl. Pap. (H. C.), sess. 1913, No. 7108, p. 6.

<sup>4</sup> 162 C. J. 131, Parl. Pap. (H. C.), sess. 1907, No. 123, p. 4, 173 Parl. Dec. 4 s. 273.

<sup>5</sup> The Speaker fully upheld this principle, in a statement made from the chair, which arose upon a letter addressed to him by several members of a standing committee, alleging that the chairman had ruled that certain amendments to a bill under their consideration were out of order, because the amendments were hostile to the bill. The Speaker said that he would not allow an appeal to be made to him on a point of order arising in a standing committee; yet he added that he could not, as a general rule, assert that amendments hostile to a bill may not be admitted, 339 H. D. 3 s. 1223.

No appeal from chairman to Mr. Speaker.

Report of bills.

S. O. 50, Appendix I.

and the house proceeds at once with its consideration, unless the member in charge desires to postpone its consideration, or a motion is made to recommit the bill.

The House of Lords, during the sessions of 1889, 1890, and 1891, by standing orders Nos. 45-53, provided for the sessional appointment of one or more standing committees to whom every bill should be recommitted, after passing through a committee of the whole house, unless, on motion made when the bill was reported by the chairman of committees, the house should otherwise order. These standing committees continued until 1910 when the standing orders under which they were appointed were vacated.<sup>1</sup> Bills reported from a standing committee were considered in the house on such report, when they had been amended either in committee of the whole house or by the standing committee.

Standing  
com-  
mittees.  
House of  
Lords.

The procedure of standing committees was the same as in a select committee, though they could not sit without special leave during a sitting of the house; and the quorum of a standing committee was seven. Standing committees were empowered to appoint a sub-committee for the fuller consideration of any bill committed to them.

Proce-  
dure.

The nomination of the standing committee was entrusted to a committee of selection appointed at the commencement of each session, consisting of the chairman of committees and eight other lords to be named by the house; and the names of the lords so nominated were reported to the house. The lord in charge of a bill committed to a standing committee was a member thereof, during the consideration of the bill.

Nomina-  
tion.

The committee of selection also nominated a chairmen's panel of not more than twelve nor less than eight lords, who appointed from among themselves the chairman of each standing committee, and might change the chairman appointed from time to time. The chairmen's panel also determined to which of the standing committees a bill should be recommitted.

Chair-  
men's  
panel.

<sup>1</sup> 142 L. J. 159, 5 H. L. Deb. 5 s. 947.

## CHAPTER XVII.

## SELECT COMMITTEES IN BOTH HOUSES : AND JOINT COMMITTEES.

General province of a select committee. A SELECT committee may be appointed by either house to consider any matters upon which that house may desire information and assistance, or any bill which may be committed to them by that house (see pp. 362, 383). In the former case the matters which the committee are to consider, and upon which they are to report to the house, are defined in the order of reference appointing the committee. In the case of a select committee upon a bill, the bill committed to it is itself the order of reference to the committee, who must report it with or without amendment to the house. The proceedings of every select committee are restricted to their own order of reference, that is to say, they are confined to the consideration of the matter referred, or of the bill committed,<sup>1</sup> to the committee; but when it has been thought desirable to do so, the house has enlarged the order of reference. This has been done in the case of a select committee upon a public matter by means of an instruction,<sup>2</sup> or even in some cases by also committing a bill to it for consideration,<sup>3</sup> whilst in the case of a select committee upon a bill the reference has been enlarged by the committal to it of another bill (see p. 362, *n.* 4), or by an instruction

<sup>1</sup> 190 H. D. 3 s. 1869.

<sup>2</sup> Standing Order Committee, 96 L. J. 207; Parliament Office Committee, 116 ib. 200; Taxation of Ireland, 120 C. J. 107; East India Communications, 121 ib. 243; Trade in Animals, 121 ib. 222, 268; House of Commons (Arrangements), 122 ib. 351; 137 ib. 132, &c. The same result has also been attained in the House of Lords by an amendment made to the order of reference on a subsequent day, Sweating System, 120 L. J. 367; Standing Orders of the House, 139 ib. 105.

<sup>3</sup> Witnesses (House of Commons) Bill committed to Select Committee on Witnesses (House of Commons), 124 C. J. 270;

Municipal Elections Bill to Select Committee on Boroughs (Auditors and Assessors), 129 ib. 212; Foreign Loans (Registration) Bill to Select Committee on Loans to Foreign States, 130 ib. 84; Public Houses (Ireland) (Saturday Closing) Bill to Select Committee on the Sunday Closing Acts (Ireland), 143 ib. 211; Sweated Industries Bill to Select Committee on Home Work, and Police (Weekly Holiday) Bill to Select Committee on Police Forces (Weekly Rest Day), 163 ib. 57, 239; Bastardy Bill to Select Committee on Bastardy Orders, 164 ib. 179. For earlier cases, see 103 ib. 929; 111 ib. 59; 114 ib. 67; 115 ib. 87.

directing it to inquire also into a public matter.<sup>1</sup> On the other hand, mandatory instructions have been given to select committees restricting the limits of their powers<sup>2</sup> or prescribing the course of their proceedings,<sup>3</sup> or directing the committee to make a special report upon certain matters.<sup>4</sup> Notice of an instruction can be placed upon the notice paper, to be moved after the appointment of a select committee, or after the nomination of members thereto, or as an independent motion.

The reports of previous committees, or the evidence taken by them, or other printed reports and papers, and other documents,<sup>5</sup> Reports and papers referred. may be referred to select committees (see p. 219). To enable a committee to cite in their report a document which has been laid upon the table, it is usual to move that it be referred to them. Petitions presented to the house relating to the subject of inquiry may also be referred, and are laid before the committee by the clerk.<sup>6</sup>

In the House of Lords, by standing order No. 50, notice of the names of lords to be nominated for service on select committees, other than those on private bills, must be entered among the printed notices for the day, while notice must also be given of any motion for adding members to a committee or for discharging any member from further attendance. Lords are nominated in the order of their precedence. Their lordships meet in one of the rooms adjoining to the upper house, and adjourn as they please.<sup>7</sup> In special cases the Lords have appointed select committees by ballot,<sup>8</sup> while in other cases the nomination of peers has been entrusted to the committee of selection.<sup>9</sup> Lords. Appointment of select committees.

Sessional committees are appointed by the Lords at the commencement of every session, viz. the committee for privileges, the sub-committee for the journals, the appeal committee, the committee of selection (see p. 748), the standing order's committee (see p. 744), and the House of Lords offices committee. Sessional committees.

By standing order No. 47, any of the lords of the committee speaks to the rest uncovered, but may sit still if he pleases; and the Sittings and proceedings.

<sup>1</sup> 129 C. J. 207; 141 ib. 253; 146 ib. 113; 159 ib. 147.

<sup>2</sup> 75 C. J. 259; 90 ib. 522; 119 ib. 147.

<sup>3</sup> 99 C. J. 284; 102 ib. 24; 137 ib. 37. 65; to take evidence on oath 142 ib. 97; to omit clauses from a bill, 145 ib. 194; to hear counsel, 123 ib. 263.

<sup>4</sup> 137 C. J. 98.

<sup>5</sup> For the reference of bills as documents to select committees, see 125 C. J. 127; 154 ib. 152, 70 Parl. Deb. 4 s. 406.

<sup>6</sup> 189 H. D. 3 s. 1047.

<sup>7</sup> 109 L. J. 30.

<sup>8</sup> 16 L. J. 758; 22 ib. 116; 40 ib. 198.

<sup>9</sup> 122 L. J. 463.

committees are attended by such judges or learned counsel as are appointed, and no man, except the lords, shall be covered in the room in which the select committee is sitting. A select committee of the House of Lords may sit, notwithstanding any adjournment of the house, without special leave.

**Witnesses.** The Lords do not give select committees authority to send for witnesses or documentary evidence, nor have the committee any such power : but parties are ordinarily served with a notice from the clerk attending the committee, that their attendance is requested on a certain day, to be examined before the committee. Until recently, such witnesses were required, previously to their examination, to be sworn at the bar of the house ; but by the Parliamentary Witnesses Act, 1858 (21 & 22 Vict. c. 78), a committee of the House of Lords may administer an oath to the witnesses examined before them. Where a positive order is thought necessary to enforce the attendance of a witness, or the production of documents, it emanates from the house itself. A select committee upon a bill cannot examine witnesses, except by order of the house.

**Choice of Chairman.** It is usual to give a Lords' committee power to appoint their own chairman : but when no such power is given, the chairman of committees (though not named as a member) is the chairman, by virtue of his office.

**Minutes of proceedings.** Pursuant to resolutions of the 25th June and 7th December, 1852, in effect the same as the Commons' standing orders Nos. 59. 60. and 61, a record is made on the minutes of the proceedings of the select committees of the House of Lords, of the names of lords who put questions to witnesses, who are present at each sitting, and who take part in a division.

**COMMONS.** The constitution of the select committees of the House of Commons is regulated by standing orders Nos. 55-62, which make provision respecting the number of members placed upon the committees, for their attendance, for the publication of their names on the notice paper of the house and upon the minutes of proceedings, and require that due previous notice shall be given of motions for the nomination of members on select committees. Notice also must be given of a motion for the addition of members to, or the discharge of a member from further attendance upon, a select committee.<sup>1</sup> In compliance with these orders, a select committee is usually confined to fifteen members : but if from any special circumstances a larger number

<sup>1</sup> 178 H. D. 3 s. 956.

should be thought necessary, the house, after notice previously given (see p. 220), makes the necessary order.<sup>1</sup>

A committee upon a matter of privilege (see p. 241) may be appointed and nominated forthwith without notice; such a committee having been held not to be governed by any of the orders applicable to the appointment and nomination of other select committees,<sup>2</sup> and the same practice is followed in the case of a committee appointed to draw up reasons to be assigned to the Lords for disagreeing to amendments made by the Lords to a bill (see p. 390) and to a committee appointed to fulfil the orders or intentions of the house (see p. 219).

The nomination of select committees has in special cases been entrusted by the order of the house to sources other than its own decision.<sup>3</sup> For instance, the house has appointed certain committees by ballot; <sup>Committees on matters of privilege, &c.</sup> <sup>4</sup> or has named two members, and appointed the rest of the committee by ballot; <sup>5</sup> or, having chosen twenty-one names by ballot, has permitted each of two members nominated by the house to strike off four from that number.<sup>6</sup> The house habitually resorts to the committee of selection, for the partial nomination of the members of committees on hybrid bills (see p. 354) and occasionally also for the nomination, wholly or partially, of other select committees.<sup>7</sup> When the house has delegated this

<sup>1</sup> Select committees nominated of twenty-one members (Civil Bills (Ireland) Bill), 106 C. J. 218 (Home Work), 162 ib. 230; of thirty-one members (Indian Territories), 107 ib. 168; of thirty members (Leasing Powers, &c. (Ireland) Bills), 108 ib. 284; of twenty-three members (Merchant Ships), 135 ib. 84; of twenty-seven members (Merchant Shipping), ib. 180; (Railway Rates, and Agricultural Tenants' Compensation Bills), 137 ib. 21, 376, &c. The Speaker has refused to allow a motion for the nomination of another member to be made after the number of members of which the committee had been ordered to consist had been nominated, without leave of the house previously obtained, 112 C. J. 157.

<sup>2</sup> 112 C. J. 232, 146 H. D. 3 s. 97; 113 C. J. 68, 148 H. D. 3 s. 1855-1867; 143 C. J. 484.

<sup>3</sup> Until the surrender by the Commons of their judicature over contested elections put an end to the general committee on elections, the nomination of committees

was occasionally entrusted to that body. Stamford, Derby, and Sligo Elections, 103 C. J. 555; 108 ib. 158; 109 ib. 52; Mr. Stonor's case, 109 ib. 182; Education (Inspectors' Reports), 119 ib. 281; Leeds bankruptcy court, 120 ib. 312. See also letter on proposal that the Speaker should nominate a select committee, Denison, 87.

<sup>4</sup> Secret committees: 56 C. J. 259 (State of Ireland); 67 ib. 492 (State of Counties); 74 ib. 64 (Bank); Colchester, iii. 37.

<sup>5</sup> 88 C. J. 144, 467, &c.

<sup>6</sup> 88 C. J. 160, 475.

<sup>7</sup> The select committees on the Passing Tolls Bill of session 1857 and the Metropolis Local Management Bill of session 1860 were nominated by the committee of selection, 112 C. J. 43; 115 ib. 304. The select committee on Mail Contracts of session 1869 consisted of seven members, five of whom were nominated by the committee of selection and two by the house, 124 ib. 85. The select committee on the Contagious Diseases Acts of session 1880

duty to the committee of selection, no notice of motion, either for the discharge of a member nominated by that committee or for the substitution of another member in his place, is permissible, unless such motion is given under authority from the committee of selection.<sup>1</sup> Members have also been nominated to serve on a committee to examine witnesses, without the power of voting,<sup>2</sup> or to serve on a committee, and to take part in its proceedings, but without the power of voting.<sup>3</sup> In the nomination of members to serve on select committees, and on select committees to whom hybrid bills (see p. 354) or private bills (see p. 665) may be referred, neither the house, nor the committee of selection, are bound to consider whether members are personally interested in the matter or bill referred to the committee, and no objection can be raised in this respect to the constitution of the committee.

**Sessional committees.** Sessional committees also are appointed, such as the committee of public accounts under standing order No. 75 (see p. 503); the committees on standing orders (see p. 633) and public petitions (see p. 560), the committee of selection (see p. 660), the general committee on railway and canal bills (see p. 661), the local legislation committee (see p. 666), the publications and debates' reports committee, and the kitchen and refreshment-rooms committee.

**Quorum.** The number that shall form the quorum of a committee is ordered by the house. Where no quorum is named, it is necessary for all the members of the committee to attend. In cases of an inquiry partaking of a judicial character, the house has named a quorum of five, but at the same time ordered the committee to report the absence of any member on two consecutive days;<sup>4</sup> or, when such an investigation has been undertaken by a committee of five members, no quorum has been fixed by the house.<sup>5</sup> Three are generally a

consisted of ten members nominated by the house with five nominated by the committee of selection, 135 ib. 47. In session 1883 the nomination of five members to serve on the joint committee on the Channel Tunnel was referred by the house to the committee of selection, 138 ib. 143; and the committee on the London Corporation (Charges of Malversation) of session 1887 consisted of five members nominated by the committee of selection, 142 ib. 108. The nomination of the ordinary committees and of specially constituted select committees upon private bills is described *infra*, pp. 661, 664.

<sup>1</sup> 3 Parl. Deb. 4 s. 552.

<sup>2</sup> Carlow Election, 91 C. J. 42; Mr. Stonor's case, 109 ib. 232; Education (Inspectors' Reports), 119 ib. 281; Leeds bankruptcy court, 120 ib. 312; London Corporation (Charges of Malversation), 142 ib. 108. In the last mentioned case these members had the power to propose, as well as to examine witnesses.

<sup>3</sup> Moorad's claim, 113 C. J. 68.

<sup>4</sup> Great Yarmouth and York Elections, 90 C. J. 457, 504.

<sup>5</sup> 109 C. J. 232; 119 ib. 281; 120 ib. 313.



quorum in committees of the upper house, and in the Commons the usual number is five when the number of the committee is fifteen and upwards :<sup>1</sup> but three are sometimes allowed,<sup>2</sup> and occasionally seven,<sup>3</sup> or nine,<sup>4</sup> or any other number which the house may please to direct. Late in the session, the original quorum of a committee is sometimes reduced.<sup>5</sup> Where a quorum is prescribed by a standing order, the order is suspended before the quorum is reduced.<sup>6</sup>

A committee cannot proceed to business without a quorum, and, pursuant to standing order No. 62, the clerk of the committee calls the attention of the chairman to the absence of a quorum at any time during its sitting. The chairman thereupon suspends the proceedings of the committee until a quorum be present, or adjourns the committee.<sup>7</sup>

As the object of select committees is usually to take evidence, the House of Commons, when necessary, gives them "power to send for persons, papers, and records." If that power be not given, the documents that may be laid before the committee are handed in by the chairman. Under the power to send for persons, &c., witnesses may be summoned by an order, signed by the chairman, and must bring all documents that will be required for the use of the committee. If the order is neglected or disobeyed, the matter is reported to the house, and an offender is treated in the same manner as if he had been guilty of a similar contempt to the house itself (see p. 77). Witnesses, however, are not summoned from India or the colonies : but application is made to the secretary of state to secure their attendance, or to obtain answers to written questions.<sup>8</sup>

In 1849, the Fisheries (Ireland) committee was appointed, with power to send for *papers and records* only,<sup>9</sup> but examined witnesses who voluntarily tendered their evidence. By this arrangement, the expense of witnesses summoned in the usual manner was avoided.

<sup>1</sup> The committee on Moorad's claim consisted of seven members, and the quorum was five, 113 C. J. 68.

<sup>2</sup> 111 C. J. 8. 12 ; 120 ib. 46.

<sup>3</sup> 110 C. J. 87 ; 125 ib. 40 ; 126 ib. 61, &c.

<sup>4</sup> Privilege (complaint against *Times* newspaper), 1854, 109 C. J. 75 ; Oaths of members, 1857, 112 ib. 374.

<sup>5</sup> 106 C. J. 279 ; 116 ib. 291 ; 127 ib. 219 ; 128 ib. 361.

<sup>6</sup> Public Accounts committee, 123 C. J. 91 ; 124 ib. 340, &c. ; Standing orders

committee, 149 ib. 278 ; 152 ib. 302, &c. For these motions notice is necessary, see p. 139.

<sup>7</sup> As to the effect upon the validity of a committee's proceedings of the absence of a quorum, see Mr. Speaker's remarks, 177 Parl. Deb. 4 s. 716. A committee has been instructed to report the evidence of a witness, although given when its quorum was incomplete, 107 C. J. 254.

<sup>8</sup> Army (India and the Colonies) committee, 1867, &c.

<sup>9</sup> 104 C. J. 75.

Absence of quorum.  
S. O. 62,  
Appendix  
I.

Power to send for persons, papers, and records.

For papers and records only.

**Scope of evidence.** A select committee on a bill, having power to send for persons, papers, and records, can take evidence only concerning that bill, unless the scope of its inquiries be enlarged by an instruction.<sup>1</sup>

**Mode of obtaining papers requiring an address.** A select committee have no power to send for any papers which, if required by the house itself, would be sought by address (see p. 561). In such cases, the chairman may either move an address in the house, or communicate with the secretary of state to whose department the papers relate, who will lay them before Parliament if he thinks proper, by command of his Majesty. The papers, when received, will then be referred to the committee by the house. Nor is a committee at liberty to send for any papers which, according to the rules and practice of the house, it is not usual for the house itself to order. In the committee on the Thames Embankment, in 1871, objections were raised to the production of a case laid before the law officers of the Crown, on the ground that such a document was not usually required to be produced by the house itself (see p. 302): but when it appeared that the opinion formed upon the case had been presented, the production of the case, upon which that opinion was founded, could not be resisted, and it was presented to the committee.<sup>2</sup>

**Special inquiries.** In 1858, the select committee on the Boundaries of Boroughs had leave to receive and call for maps, memorials, reports, papers, and records concerning the boroughs, and to confer with the boundary commissioners, and those employed under them in their inquiries, and with the members for the counties and boroughs affected.<sup>3</sup> In 1888, the select committee of the Lords on the Sweating System was empowered by a resolution of their house to employ a gentleman to visit the localities where the existence of the system was alleged, and to examine into the evidence proposed to be submitted to the committee.<sup>4</sup> In 1912 the select committee on Patent Medicines was given power to order analyses to be made.<sup>5</sup>

**Appointment discharged.** Orders for the appointment of select committees are occasionally discharged; <sup>6</sup> and other committees, with different orders of reference, appointed.<sup>7</sup>

<sup>1</sup> 190 H. D. 3 s. 1869.

<sup>2</sup> Minutes of the committee, Parl. Pap. (H. C.), scss. 1871, No. 411, pp. iv.-vi.

<sup>3</sup> 123 C. J. 183.

<sup>4</sup> 120 L. J. 455.

<sup>5</sup> 167 C. J. 124.

<sup>6</sup> 93 C. J. 265; 99 ib. 300; 108 ib. 487;

109 ib. 251; 147 ib. 214. 223. For an instance of the discharge of the order for the committal of a bill to a select committee, see 150 C. J. 213.

<sup>7</sup> Conventual, &c. Institutions, 1870, 125 C. J. 169.

During the sitting of a select committee of the Lords, under Presence of strangers. standing order No. 49, strangers may be excluded.

In the Commons, the presence of strangers during the sitting of Lords. select committees is generally permitted. Their exclusion, however, Commons. may be ordered at any time, and continued as long as the committee may think fit. When the committee are deliberating, it is the invariable practice to exclude strangers.<sup>1</sup>

Any lord is entitled, by standing order No. 48, to attend the Presence of mem- bers. select committees of that house and is not excluded from coming in and speaking, but he must not vote. This privilege does not extend Lords. to a secret committee.

Members of the House of Commons have claimed the right of being Commons. present, as well during the deliberations of a committee as while the witnesses are examined; and although, if requested to retire, they would rarely make any objection, on the grounds of established usage and of courtesy to the committee, they ought immediately to retire when the committee are about to deliberate; yet it appears that the committee, in case of their refusal, have no power to order them to withdraw.

On the 24th April, 1626, Mr. Glanville, from the select committee Precedents. on the charges against the Duke of Buckingham, stated that excep- Charges against the Duke of Buck- ingham. tions were taken by some members of the house against the examinations being kept private, without admitting some other members thereof, and desired the direction of the house. It is evident from this statement that the committee had exercised a power of excluding members; and though it is said in the journal that much dispute arose upon the general question, "whether the members of the house, not of a select committee, may come to the select committee," no general rule was laid down: but in that particular case the house ordered—

"That no member of the house shall be present at the debate, disposition, or penning of the business by the select committee: but only to be present at the examination, and that without interposition."<sup>2</sup>

An opinion somewhat more definite may be collected from the East India judica- ture. proceedings of the East India Judicature committee, in 1782. In that case the committee were about to deliberate upon the refusal of

<sup>1</sup> Any member of a select committee has a right to have the room cleared if he wishes to take the opinion of the committee upon any matter arising, select

committee on Land Acts (Ireland), Parl. Pap. (H. C.), sess. 1894, No. 310, pp. xxix. and xxx.

<sup>2</sup> 1 C. J. 849.

Mr. Barwell to answer certain questions; and on the room being cleared, he insisted upon his privilege, as a member of the house, of being present during the debate. The committee observed that as Mr. Barwell was the party concerned in that debate, they thought he had no right to be present. Mr. Barwell still persisted in his right, and two members attended the Speaker, and returned with his opinion, that Mr. Barwell had no right to insist upon being present during the debate; upon which Mr. Barwell withdrew. Here the ground taken by the committee for his exclusion was that he was concerned in the debate, and not simply that, as a member, he had no right to be present at their deliberations. The house soon afterwards ordered—

“That when any matter shall arise on which the said committee wish to debate, it shall be at their discretion to require every person, not being a member of the committee, to withdraw.”

The inference from this order must be that the committee would not otherwise have been authorized to exclude a member of the house.<sup>1</sup>

King's  
physicians.

When committees were appointed to examine the physicians of King George III., in 1810 and 1811, the house also ordered, “That no member of this house, but such as are members of the committee, be there present.”<sup>2</sup>

Irish Poor.

On the 23rd February, 1849, in the case of the Irish Poor committee, the Speaker stated that, although it had been the practice for members, not being members of the committee, to withdraw while the committee were deliberating or dividing; yet if members persisted in remaining, the committee had no power to exclude them, unless by order of the house.<sup>3</sup>

General  
results.

As members cannot be excluded from a committee room by the authority of the committee, if the occasion should arise, the committee must apply to the house for power to effect their exclusion. At the same time, it may be observed, that such applications are not favourably entertained by the house.<sup>4</sup>

Secret  
committees.

When, in the opinion of either house, secrecy ought to be maintained, secret committees are appointed,<sup>5</sup> whose inquiries are

<sup>1</sup> 38 C. J. 370; see also Election Proceedings committee, 1842, 97 ib. 438.

<sup>2</sup> 66 C. J. 6; 67 ib. 17.

<sup>3</sup> 102 H. D. 3 s. 1183.

<sup>4</sup> See Election Proceedings committee, 1842, 97 C. J. 438; Army before Sebastopol committee, 1855, 137 H. D. 3 s. 18;

Rochdale Election case, 1857, 146 H. D. 3 s. 137; see also 162 ib. 2095.

<sup>5</sup> 41 L. J. 96. 113; 42 ib. 176; 43 ib. 97; 51 ib. 436; 52 ib. 35; 53 ib. 115; 80 ib. 22; 38 C. J. 430. 435; 65 ib. 37; 66 ib. 37; 67 ib. 17; 72 ib. 26. 318; 92 ib. 26; 99 ib. 461; 112 ib. 24. 38.

conducted throughout with closed doors; and it is the invariable practice for all members, not on the committee, to be excluded from the room throughout the whole of its proceedings.<sup>1</sup>

Generally speaking, the proceedings of a select committee are assimilated, like those of standing committees, to those of a committee of the whole house.

In a select committee, however, the first proceeding is to choose a chairman, who is ordinarily called to the chair by the general voice of the members present: but if a difference of opinion should arise, the choice is obtained by the procedure observed by the house in the election of a Speaker.<sup>2</sup>

Members attending the sittings of a committee may sit or stand without being uncovered. Every question is determined in a select committee in the same manner as in the house to which it belongs. In the Lords' committee, the chairman votes like any other peer; and, if the numbers on a division be equal, the question is negatived, in accordance with the ancient rule of the House of Lords, "*Semper præsuntur pro negante*." In the Commons, the practice in a select committee, not being a private bill committee (see p. 701), is similar to that observed in divisions of the house itself, pursuant to the resolution of the house: "That, according to the established rules of Parliament, the chairman of a select committee can only vote when there is an equality of voices."<sup>3</sup> The doors of the committee room are deemed to be locked whilst a division is being taken, and a member

Proceedings of select committees.

Choice of Chairman.

Divisions. Lords.

Commons.

<sup>1</sup> "In the course of the debate (on the committee of secrecy on the Bank of England), Mr. Fox and Mr. Grey both stated distinctly and expressly, and without contradiction, that the nature of a committee of secrecy was only that it excluded from their proceedings all strangers: but that the members of the committee were not otherwise bound to individual secrecy out of the committee, than as their own sense of duty or propriety might suggest, according to the nature and object of their inquiry," Colchester, i. 91. For a discussion as to the peculiarities of a secret committee, see debates upon the budget and navy estimates, 96 H. D. 3 s. 987. 1056; Bank Acts committee, 144 ib. 506.

<sup>2</sup> Minutes of Committees; Savings Banks, 1849: Bills of Exchange Bill, 1855; Rochdale Election, 1857; Tenure and Improvement of Land (Ireland) Act,

1865; Railways, 1881; Public Accounts, 1894.

<sup>3</sup> 91 C. J. 214. In the committee on the Consolidation of the Customs and Inland Revenue, 1863, Mr. Horsfall, the chairman, had prepared a report, which was negatived by a majority of one. Mr. Cardwell then proposed a report embodying the opinions of the majority: but at the next meeting of the committee, Mr. Horsfall declined to resume the chair, and proposed that Mr. Cardwell should take it,—his object being to obtain a majority in favour of his own views. The matter being referred to Mr. Speaker, he expressed an opinion that the course proposed was contrary to the spirit of parliamentary proceedings, and Mr. Horsfall resumed the chair: but a committee so balanced being unable to agree, they merely reported the evidence without any opinion, Denison, 145.

who had heard the question put could not formerly abstain from giving his vote. In view of the change of practice in this respect in standing committees (see p. 419) this rule is not now strictly enforced in select committees. A member, having voted by mistake, has been allowed to correct the error; and a member's vote has been disallowed, as he was not in the room when the question was put.<sup>1</sup>

Sittings of committees beyond the precincts.

A select committee may adjourn its sittings from time to time, and occasionally a power is also given by the house to adjourn from place to place;<sup>2</sup> or from time to time, and from place to place.<sup>3</sup> This power of adjournment from place to place is generally intended to enable a committee to hold its sittings in different parts of London, as the Mint committee of 1837, at the Mint; the Coal Mines committee of 1852, at the Polytechnic Institution; the National Gallery committee of 1853, at the National Gallery; the Naval and Military Services (Pensions and Grants) committee of 1914 at the Treasury; and the Oaths committee of 1850, at the house of Mr. Wynn, a member of the committee, who was sick. In 1834, the committee on the Inns of Court appointed a quorum to go into Essex, to take the evidence of a witness who was unable to move from home. In 1858, it was proposed to give the power of adjourning from place to place to the committee on Contracts (Public Departments), in order to enable it to hold its sitting at Weedon: but the proposal was withdrawn, and a royal commission appointed. In 1863, this power was granted to the committee on the Thames Conservancy, to empower it to visit different parts of the river to which its inquiry extended.<sup>4</sup> In 1864, the same power was given to the committee on Schools of Art, and in 1881 to the committee on Artizans' and Labourers' Dwellings.<sup>5</sup>

Committee appointed to examine sick witnesses.

In certain cases, select committees have been appointed expressly for the purpose of taking the examination of witnesses who were incapacitated by sickness from attending personally to be examined before the house or its committees.<sup>6</sup>

Sittings of select committees during sitting of the house.

Formerly, without the leave of the house, no committee of the Commons could sit during a sitting of the house, but now, by standing order No. 54, all committees, not being standing committees (see p. 418) are able to sit on days when the house meets for business,

<sup>1</sup> Railways (Rates and Fares), Parl. Pap. (H. C.), sess. 1882, No. 317, pp. 50. 63.

<sup>2</sup> 89 C. J. 419; 101 ib. 152; 105 ib. 215; 107 ib. 279; 108 ib. 453; 111 ib.

318; 170 ib. 22.

<sup>3</sup> 72 C. J. 26. 318; 108 ib. 350.

<sup>4</sup> 118 C. J. 240.

<sup>5</sup> 119 C. J. 255; 126 ib. 336.

<sup>6</sup> 61 C. J. 435; 2 Hatsell, 138, n.

during the sitting, and notwithstanding any adjournment<sup>1</sup> of the house, except while the house is at prayers. The Serjeant, therefore, under standing order No. 64, when the house is going to prayers, gives notice thereof to the committees (see p. 189), and all proceedings of committees, after such notice, are null and void, unless such committees be otherwise empowered to sit after prayers.

S. O. 54,  
Appendix  
I.  
S. O. 64,  
Appendix  
I.

A committee may not sit, save by leave of the house, on a day when the house is not sitting. The leave of the house must be obtained, therefore, on a Friday night, to enable a committee to sit on Saturday.<sup>2</sup> Occasionally, committees have been ordered to sit from day to day notwithstanding any adjournment of the house, or to sit and proceed forthwith, and to sit from day to day.<sup>3</sup>

Sittings  
during ad-  
journment  
of the  
house.

A select committee ought to be regularly adjourned from one sitting till another, though in practice the reassembling of the committee is sometimes left to be afterwards arranged by the chairman, by whose direction the members are summoned for a future day: but this practice, not being regular, can only be resorted to for the convenience of the members and with their general concurrence. In 1871, a complaint was made, that, a day having been fixed for the next meeting of the committee by the chairman, he had, after consulting several members of the committee, appointed an earlier day: but it was ruled that, under the circumstances explained to the house, such a proceeding was not irregular.<sup>4</sup>

Adjourn-  
ment of  
com-  
mittees.

In 1856, the Masters and Operatives committee was revived,<sup>5</sup> in consequence of an irregularity in its adjournment—the first instance, it is believed, of such a proceeding, except in the case of committees on private bills.

Revival of  
a select  
com-  
mittee.

Where select committees have been appointed to inquire into matters in which the private interests, character or conduct of

<sup>1</sup> The words, "any adjournment," in the standing order, are held by usage to mean the adjournment of the house whilst the committees are sitting.

<sup>2</sup> On Saturday 11th July, 1903, the joint committee on the Port of London Bill sat without the Commons' members obtaining leave of the house. The Speaker ruled privately that such leave was unnecessary.

<sup>3</sup> 123 C. J. 183; 124 ib. 87. Leave has been given to all committees to sit, notwithstanding any adjournment of the house, during the remainder of the session, 147 ib. 390; 150 ib. 394; until the

adjournment for the Easter recess, 163 ib. 142; until a day named, 165 ib. 153; until a day during the Easter recess, 170 ib. 87; to a joint committee, 170 ib. 189; during a recess, ib. 132. In session 1914–16, when it was proposed that the house should not sit on Fridays, leave was given to all select committees to sit on that day, and in session 1916 similar leave was given and extended to Mondays, if the house adjourned from Thursday or Friday till Tuesday, 170 C. J. 40; 171 ib. 13.

<sup>4</sup> 205 H. D. 3 s. 685.

<sup>5</sup> 111 C. J. 298.

members of the House of Commons or other persons are concerned, the committees are empowered to hear counsel on behalf of such persons, the order of the house for that purpose being obtained on petitions presented to the house,<sup>1</sup> on the report of the committee,<sup>2</sup> or on a motion to that effect.<sup>3</sup> A committee has also been instructed to hear parties by counsel or otherwise;<sup>4</sup> and, on the other hand, the order of the house has provided that such hearing of persons interested shall be at the discretion of the committee.<sup>5</sup>

Charges  
made  
against  
members  
in a com-  
mittee.

In accordance with the resolution of the 16th March, 1688, if any information come before a committee that chargeth a member of the house, the committee ought only to direct that the house be acquainted with the matter of such information, without proceeding further thereupon.<sup>6</sup>

Minutes of  
evidence.

The evidence of the witnesses examined before a select committee is taken down in shorthand, and printed daily for the use of the members of the committee.<sup>7</sup> In the Lords, the printing is authorized by an order of the house; in some cases with special directions restricting the delivery of the copies of the evidence, or of certain portions thereof.<sup>8</sup> In the Commons, evidence before select committees is printed according to long-established usage.

Correction  
of evi-  
dence.

A printed copy of his evidence is sent to each witness for his revision, with an instruction that he can only make verbal corrections, as corrections in substance must be effected by re-examination; nor is a witness permitted to see the original manuscript notes of his evidence. Alterations should be confined to the correction of inaccuracies, or the necessary explanation of any answer, and are required to be in the handwriting of the witness himself, unless he is disabled by accident or infirmity, in which case they may be written

<sup>1</sup> 124 C. J. 51.

<sup>2</sup> 143 C. J. 234; 167 ib. 384. 388. 430.

<sup>3</sup> 124 C. J. 48; 135 ib. 188.

<sup>4</sup> 77 C. J. 405; 88 ib. 169. 568; 110 ib. 367; 116 ib. 307; 119 ib. 193; 123 ib. 263; 124 ib. 48. 51.

<sup>5</sup> 143 C. J. 234; 144 ib. 253; 151 ib. 402; 152 ib. 29; 155 ib. 178; 167 ib. 384. 388. 430.

<sup>6</sup> 10 C. J. 51. See also ib. 647, and proceedings of select committee on British South Africa, *Parl. Pap.* (H. C.), sess. 1897, No. 311, p. xxxiii., and Mr. Speaker's ruling, 49 *Parl. Deb.* 4 s. 1273.

<sup>7</sup> For the permanent establishment of the shorthand writer to both houses of

Parliament, see p. 184. Official reports of evidence by shorthand writers were first ordered by the Lords, on divorce bills, 1699, 1700, 16 L. J. 524. 630. 634. Shorthand writers were subsequently employed by the Lords in 1786, upon the slave-trade inquiries; and by the Commons in 1792, on the Eau Brink Drainage. Pursuant to the Act, 42 Geo. III. c. 84, shorthand writers attended election committees, Colchester, iii. 332; see also resolution 4th May, 1789, regarding Mr. Gurney, who was appointed to take minutes at the trial of Warren Hastings, 44 C. J. 320.

<sup>8</sup> 115 L. J. 177; 117 ib. 393. 418; 121 ib. 116; 139 ib. 146. 167.



by another person at his dictation. The corrected copy should be returned without delay to the committee clerk, who is to examine the corrections, and, if any appear to be irregular, he is to submit them to the chairman. If the evidence be not returned, with corrections, in six days, or some other reasonable time, according to the circumstances, it is printed in its original form.<sup>1</sup> Where evidence has been taken upon oath, its correction should be restrained within very narrow limits. On the 20th July, 1849, an instruction was given to a select committee to re-examine a witness "touching his former evidence," as it appeared that he had corrected his evidence more extensively than the rules of the house permitted, and his corrections had consequently not been reported by the committee;<sup>2</sup> and in 1849, a committee of the Lords reported that the alterations made by some of the witnesses were so unusual, that they had ordered the alterations and corrections to be marked, and printed in the margin.<sup>3</sup>

Leave is occasionally given to the parties appearing before a select committee to print the evidence from the committee clerk's copy, from day to day.<sup>4</sup>

Both as a breach of the Commons' privileges (see p. 76), and pursuant to the resolution of the house forbidding the publication,<sup>5</sup> no member, or any other person, may publish any portion of the evidence taken by, or documents presented to select committees, which have not been reported to the house; and this rule extends equally to the report of a committee before it has been presented to the house.<sup>6</sup>

Select committees are able to consider and to report to the house resolutions recommending an outlay of public money for the purposes therein specified, without the previous signification of the royal

Evidence and report not to be published until reported.

Consideration of resolutions involving public money.

<sup>1</sup> Instructions by Mr. Speaker, 16th April, 1861; and see 189 H. D. 3 s. 1223.

<sup>2</sup> 104 C. J. 525.

<sup>3</sup> Railway Acts, 1st Report, 81 L. J. 107.

<sup>4</sup> 126 C. J. 202; 131 ib. 300. 350; 132 ib. 141. 202, &c.; 135 ib. 209; 147 ib. 283; 154 ib. 252, &c.

<sup>5</sup> 92 C. J. 282; 130 ib. 141. See also 28 Parl. Deb. 4 s. 1257; second special report from select committee on Cottage Homes Bill, Parl. Pap. (H. C.), sess. 1899, No. 271, 154 C. J. 327, 74 Parl. Deb. 4 s. 1013.

<sup>6</sup> 159 H. D. 3 s. 813; 238 ib. 802. When

a report of a select committee, which had been formally presented to the house but was not yet available for the use of members, was communicated to the press, the Speaker stated that the more regular practice was that members of the house should be the first to be put in possession of the results of the deliberations of a select committee, 14 Parl. Deb. 4 s. 812. The irregular publication of reports by royal commissions has been referred by the Lords to the committee on the office of the Clerk of the Parliaments, 116 L. J. 200.

recommendation (see p. 457), because such a resolution is classed among those abstract resolutions by the house in favour of public expenditure, which are in the nature of suggestions, and are not in themselves binding upon the action of the house.<sup>1</sup>

Draft  
resolu-  
tions or  
report.

When the evidence has been concluded in a committee on a public matter, the chairman prepares resolutions, or a draft report, which it is customary to print and circulate among the members before consideration.<sup>2</sup> Resolutions are open to discussion and amendment, subject to the same rules as in a committee of the whole house. No resolution or amendment may be proposed, which is not within the order of reference; and the chairman will decline to put it from the chair.<sup>3</sup> When a resolution has been agreed to, the committee are unable to review and amend it. When there are more than one series of resolutions, it is usual to move that those to be proposed by Mr. A. (generally the chairman) be now taken into consideration; which question may be amended by leaving out "Mr. A." and inserting "Sir W. H.;" and the opinion of the committee being ascertained, the consideration of the resolutions preferred by them is proceeded with. A draft report is read the first time *pro forma*, and a second time paragraph by paragraph, each paragraph being liable to amendment, according to the ordinary rules which govern amendments. A question is also put that each paragraph, or each paragraph as amended, stand part of the report. In case there should be two or more draft reports, proposed by different members, they are severally read the first time, when a question is proposed that the draft report proposed by Mr. C. be now read a second time, paragraph by paragraph; to which an amendment may be moved to leave out "Mr. C." and insert "Lord D.;" and when the committee have decided which of the rival reports shall be accepted for consideration, it is proceeded with, paragraph by paragraph, and becomes the basis of the report of the committee to the house. New paragraphs may also be inserted throughout the report, or added by way of amendment. When the whole report has been agreed to, a question is put that it be the report of the committee to the house.

<sup>1</sup> Reports: sess. 1857-8, on Mr. Barber's case, 113 C. J. 231; sess. 1877, on Lord Cochrane's case, 132 ib. 143; and on House of Commons (Ventilation), Parl. Pap. (H. C.) sess. 1886 (I.), No. 173, and sess. 1886 (II.), No. 37, &c.; see 3 Hattell 243, n., also payment of witnesses (p.

529).

<sup>2</sup> Each set of resolutions or draft report which is read the first time is printed *in extenso* in the minutes of the committee.

<sup>3</sup> Committee on Local Taxation, 1870, resolution of Sir M. Lopes.

In a select committee on a bill the procedure of the committee of the whole house is followed, and when the evidence, if any, has been concluded, the clauses of the bill are considered. The rules which have been already described with regard to amendments to bills (see p. 369) in committee of the whole house apply to the consideration of bills by select committees. Though the power of the house of making relevant amendments in a bill, under standing order No. 34 (see p. 364), is, in terms, confined to committees of the whole house, it is acted upon by select committees, as the rules of select committees follow, as far as possible, those of the house, and of committees of the whole house.<sup>1</sup> A select committee has, consequently, the power of considering a money clause, if duly sanctioned by a resolution (see p. 458).<sup>2</sup>

Procedure  
in select  
committee  
on a bill

The irregularity of the conversion by amendments of a bill into a new bill, by the committee to whom the bill was referred, has been considered (p. 376); though a select committee, after consultation with the Speaker, have negatived all the clauses, and the preamble of a bill; and made thereon a special report to the house.<sup>3</sup> If the select committee should fail to report the bill, the committee may be revived, and the bill recommitted to it.<sup>4</sup>

Power of  
select  
committee  
over bill.

When the bill is reported from a select committee, it is recommitted to a committee of the whole house,<sup>5</sup> unless it be first recommitted to the same select committee.<sup>6</sup> If, in addition to reporting the bill, with or without amendments, the committee desire to inform the house of any matters relating to the bill, they make a special report.<sup>7</sup>

Bills re-  
ported  
from  
select  
commit-  
tees.

Select committees formerly had no power to report either their opinion, or the minutes of evidence taken before them, without leave given by an order of the house. By standing order No. 63, committees empowered to send for persons, papers, and records, can now

Power to  
report.

S. O. 63,  
Appendix  
1.

<sup>1</sup> Pier and Harbour Orders Confirmation Bill, 118 C. J. 248; Government Annuities Bill, 119 ib. 255; Municipal Corporations (Borough Funds) Bill, and Wild Fowl Protection Bill, 127 ib. 169, 342.

<sup>2</sup> Electric Telegraphs Bill, 123 C. J. 350; County Officers and Courts (Ireland) Bill, 134 ib. 301, MS. Minutes of Proceedings. The Speaker has drawn the attention of the house to a clause inserted in a bill by a select committee, which, unsanctioned by a previous committee's resolution, charged the payment of salaries upon the Consolidated Fund; and the bill was consequently recommitted, 17th July,

1843, 98 C. J. 487. In session 1912-13 the select committee on a bill inserted a clause in italics imposing a charge, and the necessary resolution of the committee of the whole house was agreed to before the consideration of the bill in committee of the whole house on recommitment, 167 C. J. 429, 437.

<sup>3</sup> Sale of Liquor (Sunday) Bill, 123 C. J. 305, Parl. Pap. (H. C.), sess. 1867-8, No. 402.

<sup>4</sup> 115 C. J. 373.

<sup>5</sup> 106 C. J. 393; 107 ib. 199.

<sup>6</sup> 97 C. J. 440; 98 ib. 487; 106 ib. 239.

<sup>7</sup> 110 C. J. 236; 120 ib. 386.

report their opinion and observations, together with the minutes of evidence, to the house, and also make a special report of matters which they may think fit to bring to the notice of the house.

Power to  
report  
from time  
to time.

It is the custom not to report the evidence until the inquiry has been completed, and the report is ready to be presented : but where an intermediate publication of the evidence, or more than one report, has been thought desirable, the necessary power has been conferred upon the committee on its appointment,<sup>1</sup> or the house has granted leave subsequently, on the application of the chairman, for the committee to "report its opinion or observations, from time to time," or to "report minutes of evidence" only, from time to time.<sup>2</sup> Until the report and evidence have been laid upon the table, it is irregular to refer to them in debate,<sup>3</sup> or to put questions in reference to the proceedings of the committee.<sup>4</sup> If a committee, at the conclusion of their inquiry, make a final report to the house, the sittings of the committee are assumed to have been closed ;<sup>5</sup> and if further proceedings were desired, it would be necessary to revive the committee.<sup>6</sup>

Inquiry  
not com-  
pleted.

When a committee have not completed their inquiries before the end of the session, they report the fact to the house together with any evidence which they may have taken.<sup>7</sup> In their report they usually recommend the re-appointment of the committee in the next session. This course has usually been followed, and the evidence taken in the previous session has been referred to the newly appointed committee.<sup>8</sup>

<sup>1</sup> 103 C. J. 139 ; 161 ib. 45 ; cf. also select committee on Navy Estimates, 143 C. J. 95. 104 *et seq.*

<sup>2</sup> 74 L. J. 80, &c. ; 92 C. J. 18. 167 ; 112 ib. 282, &c.

<sup>3</sup> 159 H. D. 3 s. 814 ; 193 ib. 1124. For exception to this rule see select committee on Loans to Foreign States, Parl. Pap. (H. C.), sess. 1875, No. 367, p. lv., 130 C. J. 141. 148 ; and Mr. Disraeli's remarks, 223 H. D. 3 s. 1119-20.

<sup>4</sup> 189 H. D. 3 s. 604.

<sup>5</sup> See also the Speaker's ruling that a motion to commit a bill to a select committee on another bill was out of order, as the committee, having reported the bill committed to it, had ceased to exist, 11 Parl. Deb. 4 s. 1287.

<sup>6</sup> Tyne River, &c., 105 C. J. 201.

<sup>7</sup> When for any reason the evidence

taken before a committee has not been laid before the house, the committee re-appointed in a subsequent session cannot report it except as a paper in the appendix. To obviate this difficulty, in the case of the select committee on Income and Property Tax, the house ordered the evidence of the previous session to be laid before it ; and when presented referred it to the reappointed committee, with leave to report it forthwith, 107 C. J. 163. 168. 177. Under similar circumstances, the house has ordered the evidence taken in the previous session to be referred to the reappointed committee and to be printed, House of Commons (Ventilation), 158 C. J. 261 ; Police Forces (Weekly Rest Day), 164 ib. 126. 140.

<sup>8</sup> Town Holdings, 147 C. 65 J. 75.

There have been instances in which the chairman of a committee, after the committee had reported, has published his own draft report, which had not been accepted, accompanied, in some cases, by additional arguments and illustrations; <sup>1</sup> and no objection had been urged against such a publication: but on the 21st July, 1858, it was brought to the notice of the house, that the chairman of a committee had published and circulated, in the form of a parliamentary proceeding, a draft report which he had submitted to the committee, but which had not been entertained by them, accompanied by observations reflecting upon the conduct and motives of members of that committee. No formal vote was sought for on this occasion: but it was generally agreed that the proceeding was irregular, and contrary to the usage of Parliament.<sup>2</sup>

In one case the report of a committee had been made, and ordered to be printed, in the previous session, but was, in fact, prepared by the chairman after the prorogation. A committee was appointed to consider the circumstances under which the document purporting to be the report of the committee had been ordered to be printed; and on their report being received, the house resolved, "That the document was not a report which had been agreed to by the said committee, and that the said document be cancelled."<sup>3</sup> On the 28th April, 1863, notice being taken that the analysis of evidence appended to the report of the select committee on Sewage of Towns in the last session, comprised observations and opinions not within the scope of such analysis, it was ordered to be cancelled.<sup>4</sup> Notice also has been taken of certain errors in a statement comprised in the appendix to a report, and a corrected statement ordered to be laid before the house.<sup>5</sup>

When the evidence has not been reported by a committee, it has sometimes been ordered to be laid before the house.<sup>6</sup> It is usual, however, to present the report, evidence and appendix together, which are ordered to lie upon the table,<sup>7</sup> and to be printed. In presenting a report, the chairman appears at the bar, and is directed by the Speaker to bring it up.<sup>8</sup>

<sup>1</sup> Agricultural Distress, 1836; Income Tax, 1861.

<sup>2</sup> 151 H. D. 3 s. 1867.

<sup>3</sup> 102 C. J. 254. 682.

<sup>4</sup> 118 C. J. 189.

<sup>5</sup> 103 C. J. 621.

<sup>6</sup> 88 C. J. 671; 105 ib. 637, &c.

<sup>7</sup> Debate on this motion adjourned, 137

C. J. 504. In 1850 the house referred the evidence taken before the Ceylon committee "to the Secretary of State for the Colonies for the consideration of her Majesty's Government," instead of ordering it to be printed, 105 C. J. 661.

<sup>8</sup> In session 1914-16 the select committee on Naval and Military Services

Publication of draft reports.

Reports cancelled.

Reports of committees.

Consideration of reports.

In the House of Lords, pursuant to standing order No. 51, any report presented by a select committee, other than a select committee on private bills, is not merely to be laid upon the table of the house, but to be printed and circulated, and notice is to be given on the minutes of the day on which it may be intended to take the report into consideration. If it be expedient, the Commons appoint the consideration of the report of a select committee for a future day, by a motion made on the presentation of the report,<sup>1</sup> or by a subsequent motion for that purpose.<sup>2</sup> The report of a committee presented during a previous session has also been thus taken into consideration.<sup>3</sup> On the consideration of a report, motions have been made expressing the agreement<sup>4</sup> or the disagreement of the house therewith,<sup>5</sup> or motions are made which are founded upon, or which enforce, the resolutions of the committee.<sup>6</sup>

Recommittal of reports.

Motions also may be made that the report be recommitted;<sup>7</sup> or recommitted, with minutes of proceedings, so far as they relate to a certain paragraph;<sup>8</sup> or recommitted, and the order of reference amended;<sup>9</sup> or communicated to the Lords at a conference.<sup>10</sup>

Joint committees of Lords and Commons.

There are several early instances of the appointment of joint committees of the two houses:<sup>11</sup> but until 1864, no such committee had been appointed since 1695.<sup>12</sup> A rule, similar to that adopted in regard to conferences (see p. 533), that the number on the part of the Commons should be double that of the Lords, in the constitution of a joint committee is no longer in force; and joint committees

(Pensions and Grants), which had received leave to sit during a prolonged adjournment of the house, was empowered to send its report to the Clerk of the House, if the house was not sitting, who was ordered in that case to give directions for printing and circulating the Report and to lay it upon the table at the next sitting of the house, 170 C. J. 22, 38, 235.

<sup>1</sup> 130 C. J. 134; 131 ib. 405, &c.

<sup>2</sup> 57 C. J. 413, 481; 61 ib. 147, 152; special report, Evesham, 86 ib. 168; Railway Servants, &c., 1892, privilege case, 147 ib. 129, 170; see p. 123.

<sup>3</sup> 86 C. J. 161.

<sup>4</sup> 15 C. J. 597; 34 ib. 740; 89 ib. 471.

<sup>5</sup> 64 C. J. 413. A motion of concurrence has been superseded by an amendment "to proceed to the orders of the day," 143 C. J. 511.

<sup>6</sup> 94 C. J. 352; 100 ib. 642; 142 ib. 306; 143 ib. 511. See also motion 26th

July, 1897, relating to the report of the select committee on British South Africa, 152 ib. 388. The reports of the Public Accounts committee have been discussed on a motion for their consideration, 160 ib. 359, 150 Parl. Deb. 4 s. 420, etc.

<sup>7</sup> 76 C. J. 213; 82 ib. 318; 88 ib. 583; 92 ib. 478; Azeem Jah (forgery of signatures to petitions, 1865), 120 ib. 252.

<sup>8</sup> As the previous question cannot be entertained in a Commons' committee (see p. 253), the paragraph on the minutes of the proceedings of a select committee, which contained an entry of a motion for the previous question, was recommitted to the committee, 137 C. J. 509.

<sup>9</sup> 70 C. J. 430.

<sup>10</sup> 91 C. J. 9.

<sup>11</sup> 3 Hatsell, 38 *el seq.*; trials of the Lords in the Tower, 8th May, 1679; Lord Stafford's impeachment, 27th Nov. 1680.

<sup>12</sup> 22nd April, 1695, 11 C. J. 314.

consist of equal numbers, representing both houses. This practice began in 1864, when, at the instance of Mr. Milner Gibson, the Commons appointed a committee of five members on the railway schemes of that session affecting the metropolis; and requested the Lords "to appoint an equal number of lords to be joined with the members of this house." The Lords accordingly appointed a committee of five lords to join the committee of the Commons.<sup>1</sup> Joint committees have since been repeatedly appointed at the instance of one house or the other.<sup>2</sup> The house in which the joint committee

<sup>1</sup> 119 C. J. 38. 57, 173 H. D. 3 s. 291. 311. 493.

<sup>2</sup> Originated by the Lords: Parliamentary Deposits, 188 H. D. 3 s. 423, 122 C. J. 311; Despatch of Public Business, 124 ib. 87; Parliamentary Agency, 131 ib. 282; Stationery Office, 136 ib. 281; Private Bills (Memorandum of Association), 144 ib. 341; Statute Law Revision Bills, 147 ib. 102; 148 ib. 92; Statute Law Revision and Consolidation Bills, 149 ib. 33; 150 ib. 95; 151 ib. 43; 152 ib. 27; 153 ib. 81; Electrical Energy (Generating Stations and Supply), 153 ib. 80; Houses of Lords and Commons Permanent Staff, 153 ib. 46; Railways Ireland (Amalgamation) Bills, 155 ib. 129; London Underground Railways, 156 ib. 60; Sunday Trading, 161 ib. 59; Poisons and Pharmacy Bill, Companies Consolidation Bill, and Post Office Consolidation Bill, 163 ib. 79. 170; Water Supplies Protection Bill, 165 ib. 61; Local Government Acts, 1888 and 1894, &c., 165 ib. 213; 166 ib. 27; Metropolitan Water Board (New Works) Bill, 166 ib. 75; Consolidation Bills, 167 ib. 21; 169 ib. 101; 170 ib. 123; 171 ib. 48; Ancient Monuments (Consolidation and Amendment) Bill, &c., 167 ib. 137; Forgery Bill, 168 ib. 45. Originated by the Commons: Railway Companies Amalgamation, and Tramways (Metropolis), 127 C. J. 61. 83; Railways Transfer and Amalgamation Bills, 128 ib. 62; Channel Tunnel, 138 ib. 116; Debates and Proceedings in Parliament, and Private bill legislation, 143 ib. 86. 93; Railway Rates and Charges Provisional Order Bills, 146 ib. 129; 147 ib. 62; Electric and Cable Railways (Metropolis), 147 ib. 74; Canals Rates, Tolls and Charges Provisional Order Bills, 148 ib. 251; 149 ib. 123; 150 ib. 230; 151 ib. 50; Electric Powers (Protective Clauses), 148 ib. 274;

Merchant Shipping Bill, 148 ib. 560; Dublin Corporation and Clontarf Urban District Council Bills, 155 ib. 104; Municipal Trading, 155 ib. 125; Queen Anne's Bounty Board, 155 ib. 275; 156 ib. 212; Widows and Orphans of Soldiers and Sailors, 156 ib. 37; Presence of the Sovereign in Parliament, 156 ib. 79; Housing of the Working Classes, 157 ib. 80; London Water Bill, 157 ib. 90; Municipal Trading, 158 ib. 102; Port of London Bill, 158 ib. 168; Metropolitan Water Board Bills, 162 ib. 68; Lotteries and Advertisements, Port of London Bill, 163 ib. 112. 168; High Court of Justice (King's Bench Division), Stage Plays (Censorship), 164 ib. 273; Licensing Consolidation Bill, 165 ib. 66; Gas Authorities (Residual Products), 167 ib. 334. In session 1894 the Commons proposed the committal of the Merchant Shipping Bill to a joint committee, and agreed to the Lords' proposal that it should be committed to the joint committee on Statute Law Revision, &c., Bills, 149 ib. 66. 77. In session 1911 the Commons proposed that the Thames Conservancy Bill should be committed to the joint committee on the Metropolitan Water Board (New Works) Bill, to which the Lords agreed, 166 ib. 87. 94. The joint committee on the Stationery Office of session 1881 was nominated but did not meet. In session 1908 a message from the Lords proposing that certain Electric Supply Bills affecting London should be referred to a joint committee was considered by the Commons, when the Lords' resolution was disagreed to, 163 C. J. 79. 102, while in session 1886 no decision was come to by the Commons on the message from the Lords stating that they had appointed a committee on the Government of India, and asking the Commons to appoint a similar committee.



originates appoints a committee consisting of a certain number of its members, and requests the other house to appoint a committee of a like number to form the joint committee, and sends it a message to that effect. An addition to the number of members of the joint committee is secured by the same method.<sup>1</sup> The appointment of a joint committee in the house in which it originates is now usually preceded by a resolution communicated to, and concurred in by, the other house affirming the expediency of such appointment,<sup>2</sup> or of the committal of a bill to a joint committee,<sup>3</sup> as the case may be.

The circumstances and manner in which certain bills under the Private Legislation Procedure (Scotland) Act, 1899, are committed to joint committees are described in Chapter XXXII.

Time and  
place of  
meeting.

It is the custom that the Lords should propose the time and place of meeting, whether the committee be first desired by the Lords or by the Commons; and the committee of the Commons are directed to meet the Lords' committee accordingly, and they agree in the appointment of the chairman of the joint committee without an order from their house.

Chair-  
man's  
vote.

The practice of the House of Lords, which empowers the chairman of a committee to vote like the other members, without a casting vote, and establishes that, if the votes of the committee are equal, the question is decided in the negative (see p. 433), is followed by a joint committee.<sup>4</sup>

Instruc-  
tions.

An instruction to a joint committee is governed by the rules which regulate instructions to committees of the whole house (see p. 364), and cannot, therefore, be drawn in a mandatory form, or endow the committee with powers already possessed by them.

141 C. J. 91. 101, &c. No action was taken by the House of Commons upon the proposal of the Lords for joint committees on Town Improvements (Betterment), 1893-94, on the Declaration against Transubstantiation, 1901, and on the Professional Accountants Bill and Rights of Way Bill, 1911, while in the case of Drafting of Bills, 1895, and Housing of the Labouring Classes, 1901, joint committees were appointed by both houses, but members were not nominated to serve thereon. In the case of Motor Omnibus and Trolley Vehicle traffic a resolution of the Lords as to the expediency of a joint committee was agreed to by the Commons without further action being taken, 169 C. J. 394. 403.

<sup>1</sup> 147 C. J. 165. 175. In the case of the joint committees on Statute Law Revision and Consolidation Bills, additional members have been added to the committee in respect of individual bills, 149 C. J. 96. 101; 151 ib. 167. 197, &c.

<sup>2</sup> 128 C. J. 62; 148 ib. 92; 153 ib. 80. A motion may be made for agreeing with such a resolution in the House of Commons without notice, 21 H. C. Deb. 5 s. 1245.

<sup>3</sup> 148 C. J. 560; 157 ib. 90.

<sup>4</sup> Despatch of Public Business, 1869; Railway Companies, 1872; Joint Committee Proceedings, vols. vii. 178, and xiii. 102. See also proceedings and special report of joint committee on London Water Bill, Parl. Pap. (H. C.), sess. 1902, No. 222, p. iv., xxii.



A joint committee has the same power of swearing witnesses as Witnesses committees sitting separately, in the usual manner.<sup>1</sup>

In former times, committees of both houses have been put in Communi-  
communication with each other.<sup>2</sup> .In 1861, also, power was given cations  
to the select committee on the business of the house to communi- between  
cate, from time to time, with a select committee of the House of select  
Lords upon the same subject.<sup>3</sup> commit-  
tees.

<sup>1</sup> Railway Amalgamation Bills, 1873.

ib. 287. 291.

<sup>2</sup> Corresponding Societies, 1794, 49  
C. J. 619. 620 ; State of Ireland, 1801, 66

<sup>3</sup> 93 L. J. 13, 116 C. J. 77.

## CHAPTER XVIII.

## PARLIAMENT, AND CHARGES UPON THE PEOPLE.

Part I. The Crown.

Part II. The House of Commons.

Part III. The House of Lords.

**Part I.—** THE SOVEREIGN, being the executive power, is charged with the management of all the revenue of the state, and with all payments for the public service. The Crown, therefore, acting with the advice of its responsible ministers, makes known to the Commons the pecuniary necessities of the government; the Commons, in return, grant such aids or supplies as are required to satisfy these demands; and they provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which they have granted. Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant: but the Commons do not vote money unless it be required by the Crown; nor do they impose or augment taxes, unless such taxation be necessary for the public service, as declared by the Crown through its constitutional advisers (see p. 462).

Demand  
for supply  
by the  
Crown.

The demand by the Crown for grants of aid and supply for the service of each financial year is made in the speech from the throne at the opening of Parliament. The sovereign addresses the Commons, demands the annual supply for the public service, and acquaints them that estimates will be laid before them of the amount that will be required. Further demands may be made during the progress of the session by messages from the Crown desiring pecuniary aid (see p. 454), by a demand for a vote of credit (see p. 454), or by the presentation of an estimate. The form in which the Commons vote those supplies is consequently a resolution that each sum "be granted to his Majesty;" nor is a grant of supply, even when endowed with the force of law, available for use until the sovereign puts it at the disposal of the treasury by a royal order under the sign manual.<sup>1</sup>

<sup>1</sup> Parl. Pap. (H. C.) sess. 1868-9, No. 366, part ii. p. 651.

In accordance with the royal direction,<sup>1</sup> estimates are laid before the House of Commons, stating the specific grants of money which will, during the current year, be required for the army, navy, and civil services; and by resolution, 19th February, 1821, the house directs that whenever Parliament assembles before Christmas, the estimates for the naval and military services should be presented before the 15th day of January then next following, if Parliament be then sitting; and that such estimates should be presented within ten days after the opening of the committee of supply, when Parliament does not assemble till after Christmas.<sup>2</sup> The directions given by this resolution are observed, as far as possible, by the army, navy, and civil service departments.

Until 1854, estimates were not presented in respect of the revenue departments. Prior to that year, the charges of collecting the revenue were deducted by each department from the gross sums collected. This practice, which withdrew the full produce of the taxes, and the cost of collection, from the immediate control of Parliament, was condemned by a resolution of the house, 30th May, 1848.<sup>3</sup> The whole of the revenue derived from taxation after the deduction of payments for drawbacks, bounties of that nature, repayments and discounts is now paid into the exchequer, and the cost of the revenue departments is included among the annual estimates.<sup>4</sup>

As the sovereign is responsible for the presentation of the estimates of the public expenditure, the Crown, acting through its ministers, controls, subject to the requirements of the Exchequer and Audit Departments Act, 1866, the form in which the estimates are presented. Under established usage, however, important changes in the customary form of the estimates should not be made without the previous approval of the Public Accounts committee (see p. 503), acting on behalf of the House of Commons; and, in deference to this

Presentation of the annual estimates for the army, navy, and civil services.

Estimates for the revenue departments.

Power of Crown over form of estimates.

<sup>1</sup> In the case of the charge for the disembodied militia, the initiative was formerly taken by the House of Commons. An estimate was prepared by a select committee and referred to the committee of supply, when the royal recommendation was signified, 117 C. J. 327. Inconveniences arose from this method of procedure; and, pursuant to resolution, 9th February, 1863, the militia estimates, as long as they were required, were like the

other estimates for the public service, presented by command, 118 C. J. 36, 169 H. D. 3 s. 198.

<sup>2</sup> 76 C. J. 87.

<sup>3</sup> 103 C. J. 580.

<sup>4</sup> Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), section 10, which repealed a similar provision in 17 & 18 Vict. c. 94. See also 109 C. J. 467, Todd. ii. 201.

principle, official alterations in the estimates are restricted to such rearrangements as involve no question of principle.<sup>1</sup>

Ordinary  
sessional  
estimates.

The ordinary sessional estimates are presented in three parts or divisions, comprising the three branches of the public service—the army, navy, and civil services and revenue departments; and each estimate contains first a statement of the total grant thereby demanded, and then a statement of the detailed expenditure thereof, divided into subheads and items. These estimates should embody the total amount of the expenditure which is required for each financial year; and accordingly, when an increase over the demands made by the annual estimates for any services is requisite, revised or additional estimates are presented, specifying the amounts ultimately found necessary for those services.<sup>2</sup>

Other  
estimates.

Besides the ordinary sessional estimates for the service of the current year, to meet the requirements of the executive government, estimates for grants on account, for supplementary grants, and for excess grants, are presented during each session; and occasionally an application is made for a vote of credit to cover extraordinary naval or military charges, or for such other object of exceptional expenditure as may have arisen during the session (see p. 454).

Votes on  
Account.

Owing to our financial system, and the conditions of parliamentary business, the presentation of estimates for grants in advance upon the estimated departmental expenditure of the year, before a complete sanction has been given to that expenditure, is an annual necessity. These grants are known as “votes on account.” It was hoped that the vote of the committee of supply would be taken upon the bulk of the annual estimates during the earlier portion of each session, as the financial year closes on the 31st March, and begins on the 1st April.<sup>3</sup> The futility of a hope centred on the 1st April is the experience of every session. When that day comes round, session after session, very slender provision has been made for the requirements of the new financial year. Moreover, as every grant of supply is limited to the service of the financial year for which it is made, the

<sup>1</sup> 341 H. D. 3 s. 1517; see also Public Accounts Committee's Reports, Parl. Pap. (H. C.) sess. 1867, No. 333, p. iii.; sess. 1881, No. 350, p. iii.; sess. 1888, No. 405, p. iv.; sess. 1890, No. 71, p. iv.; sess. 1890–91, No. 361, p. ix.; sess. 1904, No. 288, p. x.; sess. 1913, No. 179, p. iii.; sess. 1916, No. 115, p. xxiii. The form of an estimate cannot be discussed on the vote in committee of supply, 156 Parl.

Deb. 4 s. 122.

<sup>2</sup> On the same principle, following the precedents of 1814, 69 C. J. 18. 449, revised estimates to carry out a reduction of the army and navy estimates, were presented in 1856, 111 ib. 172; and of the army estimates in 1858, 113 ib. 112. 120.

<sup>3</sup> Parl. Pap. (H. C.) sess. 1868–9, No. 366, part ii. p. 330.

grant lapses, if it has not been utilized before the 31st March ; and, under the provisions of the Exchequer and Audit Departments Act, 1866, all unexpended sums in the hands of the departments are surrendered to the exchequer. Thus, obviously, during the first quarter of each calendar year, a vote on account must be demanded ;<sup>1</sup> for, if no grant in advance has been made upon the 31st March, the maintenance of the public service in the early part of the new financial year will be wholly unprovided for.

During sessions uninterrupted by a dissolution, the army and navy departments are usually exempt from the necessity of obtaining votes on account.<sup>2</sup> Owing to the nature of the duties entrusted to them, the constitutional principle which insists that each grant of supply shall be devoted exclusively to the object for which the grant is made, is subjected to a temporary suspension in their case. Under sanction from the treasury, authorized by a provision in the Appropriation Act of each current financial year, and subject to a confirmation of the transaction by the next year's Appropriation Act, the military and naval departments have the power of using, at their discretion, until the close of each financial year, and so long as the

Votes on  
account  
for army  
and navy  
obviated  
by use of  
surpluses.

<sup>1</sup> Formerly in addition to the vote on account required during the month of March, one or more votes on account were rendered necessary during the months of May, June, or July by the pressure of parliamentary business which postponed the consideration of supply to the end of the session. A limit was placed by practice upon the total amount that might be demanded by estimates for a "vote on account." To retard or to obviate a renewal of these demands, estimates have been presented for the first sessional vote on account, comprising the expenditure for the ensuing three months. This course was followed in 1879 and 1881-2 ; but such opposition arose, that the proposal for a three months' supply was not pressed, and provision for two months was accepted, 244 H. D. 3 s. 1593 ; 259 ib. 1146. Accordingly, from 1881-2 till 1896, the practice was to limit the first vote on account to the ensuing two months, and the supply granted by the later votes on account to two months, or less. The power of Parliament is, in this matter, unrestricted ; and, in the session of 1888, to provide for an impending adjournment from August to November, the third vote

on account was made for the period of four months, 143 C. J. 428. Since 1896 votes on account have been taken on one of the days allotted for the consideration of the business of supply (see p. 471) of the current session, and a vote on account has been taken in the month of March comprising the expenditure for the ensuing four and a half or five months, which has obviated the necessity for another vote on account, 143 Parl. Deb. 4 s. 1226. In 1910, however, the vote on account taken in March represented six weeks' expenditure and further votes on account for six and seven weeks' expenditure were taken subsequently ; and in 1911 the vote on account in March represented three months' expenditure and a further vote on account for six weeks' expenditure was taken.

<sup>2</sup> To suit the exigencies of parliamentary business, votes on account were taken, before the numbers of men were voted, during the session of 1848, for the army and navy, 103 C. J. 253. 254 ; in 1858, for both services, 113 ib. 78, 149 H. D. 3 s. 110 ; in 1867, for the navy, 122 C. J. 112. 153 ; see also 267 H. D. 3 s. 852. 855.

aggregate sum of the estimates is not exceeded, any surplus arising on any of their votes either by the excess of the sum realized by appropriations in aid over the sum estimated or by a saving in expenditure. Accordingly, to meet the necessity of carrying on the army and navy services, those departments are permitted to make a temporary advance, on account, out of any one grant, towards any other grant which appears upon the estimates for that service, or towards defraying expenditure on an urgent service for which provision has not been made by Parliament.<sup>1</sup> Thus it is customary to obtain, before the 31st March in each year, the grant for the pay and wages of the men in the army<sup>2</sup> and the navy for the ensuing financial year, and to use the money obtained from the Consolidated Fund on the authority of this grant for the general maintenance of those services, until the grants to the army and navy are completed.

Services included in sessional grants on account.

Votes on account before a dissolution.

According to established usage, demands for grants on account are restricted to such services as have received the sanction of Parliament,<sup>3</sup> though an exception is occasionally made to this rule in favour of trifling or non-contentious new services.

Grants on account may also be rendered necessary by a dissolution of Parliament. If the dissolution occurs in the early portion of a session, before supply is completed, it may be necessary to take votes on account sufficient to carry on all the services, army and navy, as well as civil, until the new Parliament is able to consider the grant of supply.<sup>4</sup> The amounts demanded for grants on account caused by a dissolution were, to take the case of 1841,<sup>5</sup> a supply consisting of one-half of the civil and miscellaneous expenditure. In 1857<sup>6</sup> and 1886,<sup>7</sup> supply was taken for four, and five months. In 1880, supply was taken for three months, in behalf of the bulk of the navy and the civil services, and a four months' grant for education, and for those other special services, that are seldom voted in full until late in the session.<sup>8</sup> When Parliament was dissolved in 1886, as the

<sup>1</sup> 7 Edw. VII. c. 20, s. 4. See also 171 Parl. Deb. 4 s. 1457. 1499; 180 ib. 1899.

<sup>2</sup> In sess. 1905 the vote for supplies and clothing for the army was taken before the 31st March, instead of the vote for pay, 160 C. J. 97, and in sess. 1913 the votes for supplies and clothing and works, buildings and repairs, 168 C. J. 31.

<sup>3</sup> Report of select committee on Public Moneys, Parl. Pap. (H. C.) sess. 1857 (II.), No. 279, p. 7; 178 H. D. 3 s. 740; 181 ib. 1780; 197 ib. 1440; 341 ib. 1518. In

deference to this usage, in session 1895 a sum for the British East Africa Company, proposed to be included in the second vote on account, was withdrawn therefrom and included in a revised additional estimate, 34 Parl. Deb. 4 s. 656.

<sup>4</sup> 114 C. J. 158.

<sup>5</sup> 96 C. J. 383.

<sup>6</sup> 112 C. J. 93. 98.

<sup>7</sup> 141 C. J. 220. 275.

<sup>8</sup> 135 C. J. 92. 93.

navy department was possessed of a sufficiency of supply, by the exercise of the power of making a temporary application of the grants they had received towards the service in general, nominal sums only were taken on account for the navy services :<sup>1</sup> but, in future, on such an occasion, substantial grants on account will be demanded for both army and navy services. In 1895 votes on account representing four months' expenditure having been already taken for the civil services, the third vote on account, taken immediately before the dissolution, represented one month's expenditure, while votes on account were taken for the navy and army services of £1,000,000 and £4,000,000 respectively.<sup>2</sup> The facility thus given for carrying on the executive government without reference to Parliament, has not been unnoticed. In 1841, Lord John Russell, on 7th June, proposed to take supply up to 1st October. Sir Robert Peel objected, that this would enable the government to defer the meeting of Parliament until October ; and this objection was met by an assurance that the new Parliament should be summoned as soon as possible ;<sup>3</sup> and, under similar circumstances, when, in 1886, supply was asked for extending from June to 31st October, Mr. Gladstone stated that he thought it quite certain that Parliament ought to meet at an early period of time.<sup>4</sup>

The grants on account caused by a dissolution should be legalized by an Appropriation Act, passed before Parliament is dissolved, appropriating in detail all the supply voted in the expiring session in the manner used at the close of an ordinary session ; and the amount of supply left unvoted is dealt with by the succeeding Parliament.<sup>5</sup> The prorogation or dissolution of Parliament without an Appropriation Act is a constitutional irregularity, as thereby all the grants of the Commons are nullified, and the sums must be voted again in the next session, before a legal appropriation can be effected. This course was followed on the two occasions when Parliament was dissolved, no Appropriation Act having been passed.<sup>6</sup> On the occasion of the dissolution of 1820, the Commons did not pass a bill to effect the due appropriation of certain temporary supplies ; a course which

Appropriation of grants on account before a dissolution.

<sup>1</sup> 141 C. J. 275.

<sup>2</sup> 150 C. J. 317. 318. 319, 35 Parl. Deb. 4 s. 96.

<sup>3</sup> 58 H. D. 3 s. 1274.

<sup>4</sup> 306 H. D. 3 s. 1317 ; see also debate, 3 Parl. Deb. 4 s. 507.

<sup>5</sup> See Appropriation Acts, sess. I. and II. 1886.

<sup>6</sup> On the advice of Mr. Pitt in 1784, and of Lord Grey in 1831. The Commons, in 1784, resolved that the persons who acted on supply grants, unsanctioned by an Appropriation Act, would be guilty of a high crime and misdemeanour, 39 C. J. 858.



drew from the Lords a remonstrance, which that house recorded on its journal (see p. 508).

Grants on account exceeding amount required.

When, owing to the course of events, grants voted on account, as in the case of the army and navy departments, exceeded the requirements of the current financial year, statements were presented, by command, showing the amounts of the original scale of expenditure, together with reduced estimates for the sums ultimately found to be sufficient, which were referred to the committee of supply.<sup>1</sup> In one case, a grant made on account was in excess of the total amount required. The due amount was accordingly voted *de novo* in committee; and the previous resolution was rescinded, before the new resolution was agreed to by the house.<sup>2</sup>

Supplementary estimates.

A supplementary estimate may be presented either for a further grant to a service already sanctioned by Parliament, in addition to the sum already demanded for the current financial year, or for a grant caused by a fresh occasion for expenditure that has arisen since the presentation of the sessional estimates, such as expenditure newly imposed upon the executive government by statute, or to meet the cost created by an unexpected emergency, such as an immediate addition to an existing service, or the purchase of land, or of a work of art. The need for a supplementary grant to an existing service is not infrequently caused by the system in force to ensure the control of Parliament over public expenditure. To provide for the early presentation of the annual estimates, the departments are obliged to compute in the month of November their anticipated expenditure for the ensuing financial year, dating from the coming 1st April. Fallibility must attend calculations which range over sixteen months in advance; and as too large a demand for money is a grave departmental error, the official tendency is to make the demand too small. If the lesser error occurs, to avoid the still greater evil of excess expenditure, recourse of necessity must be had to a supplementary grant.<sup>3</sup>

<sup>1</sup> 69 C. J. 18. 449; 111 ib. 172.

<sup>2</sup> Transport Service, 111 C. J. 268.

<sup>3</sup> In consequence of the difficulty experienced in getting the supplementary estimates voted in session 1901 a revised estimate stating in one sum the supplementary amount still required for civil services for the year ending 31st March, 1901, was presented, following the form used in the case of the army and navy supplementary estimates and the vote on account. This

change in the form of the supplementary estimates for civil services was discussed on a motion for the adjournment of the house, 156 C. J. 82. See also the Speaker's remarks, 91 Parl. Deb. 4 s. 261. 1161. The civil services supplementary estimates were presented in this form in the following session, when the matter was again discussed on a motion for the adjournment of the house. The estimate was withdrawn and an estimate in ordinary



Supplementary estimates for the army and navy services have been presented to meet increased expenditure<sup>1</sup> caused by military operations, and to provide for an increase of the numbers of the navy<sup>2</sup> and army.<sup>3</sup> This method of placing before Parliament the demand for increased expenditure created by such an occasion, has been adopted in preference to a vote of credit (see p. 454), when a fairly definite estimate could be formed of the amount that would be required, and of the general heads under which that expenditure would fall.<sup>4</sup>

The need for an excess grant arises when a department has, by means of advances from the civil contingencies fund, or out of funds derived from "extra receipts," carried expenditure upon a service beyond the amount granted to that service, during the financial year for which the grant was made. The title of this class of estimate attests the nature of the grants; and to place on record a permanent disapproval of these departmental excesses, the Commons resolved, 30th March, 1849, that "when a certain amount of expenditure for a particular service has been determined upon by Parliament, it is the bounden duty of the department which has that service under its charge and control, to take care that the expenditure does not exceed the amount placed at its disposal for that purpose."<sup>5</sup>

A demand for an excess grant by the army and navy departments is of exceptional occurrence, as under the privilege, which has been explained (see p. 449), these departments have the power of applying the surpluses they can save out of any of the grants made to their services, to meet excess expenditure made upon other grants, in cases where such expenditure is of public advantage. An excess grant is required, however, in the case of the army or navy, whenever the total expenditure for the year has exceeded that provided in the estimates, although when the excess of expenditure has been met by the increase in the total of extra receipts over the amount that they were estimated to produce, only a token sum is taken.

Demands for excess grants, having been first brought before the committee of public accounts (see p. 503), are presented to the committee of supply in the form of a single resolution, which includes all

form of the separate supplementary sums required for the various civil services was presented, 157 C. J. 42. 55. 57; 102 Parl. Deb. 4 s. 876. 1001.

<sup>1</sup> 140 C. J. 26. 27. 89; 154 ib. 435; 155 ib. 50. 355.

<sup>2</sup> 156 C. J. 58; 167 ib. 289; 169 ib.

426; 170 ib. 42. 163. 334.

<sup>3</sup> 137 C. J. 407; 140 ib. 89. 315; 154 ib. 435; 155 ib. 47; 156 ib. 69; 169 ib. 426. 457; 170 ib. 9. 312.

<sup>4</sup> 285 H. D. 3 s. 672. 873.

<sup>5</sup> 104 C. J. 190.

Supplementary estimates (navy and army).

Excess grants.

Navy and army.

Procedure on excess grants.

the occasions for excess expenditure that have occurred in the branch of the public service to which the resolution applies ; and the grants should be voted, and the money made available before the end of the current financial year, in order that the irregularity may be set right at the earliest possible moment.<sup>1</sup>

Votes of credit.

Unexpected demands upon the resources of the United Kingdom for the defence of the empire, or for a warlike expedition, which, on account of the magnitude or indefiniteness of the service, cannot be stated with the detail given in an ordinary estimate, are laid before Parliament by an application, based on an estimate of the total sum required, for a vote of credit.<sup>2</sup> Sums obtained upon a vote of credit are, like other grants of supply, available solely during the financial year in respect of which the grant is made.<sup>3</sup>

Exceptional grants.

An exceptional grant may be required to meet the cost of an imperial undertaking which forms no part of the current service of the year, such as the 20,000,000*l.* granted to facilitate the abolition of slavery in the British Colonies ;<sup>4</sup> loans to foreign countries,<sup>5</sup> fortifications and works ;<sup>6</sup> or the grant for the purchase of the Suez Canal shares.<sup>7</sup> Demands also for pecuniary aid are made by a message from the sovereign, bearing the sign manual ; the object of these messages being usually to obtain a grant for the maintenance of the dignity and well-being of the Crown,<sup>8</sup> or for the reward of men who have rendered distinguished service to the empire.<sup>9</sup>

Procedure on exceptional grants.

These demands for exceptional grants are brought before Parliament either by a resolution proposed in a committee of the whole house, appointed to sit on a future day, for that purpose<sup>10</sup> (see p. 457), or by the presentation of an estimate, according to the nature of the

<sup>1</sup> On two occasions, in order to give facilities for further discussion, excess votes have not been taken until a late date in the session, 157 C. J. 402, 104 Parl. Deb. 4 s. 296 ; 158 C. J. 378.

<sup>2</sup> 111 C. J. 269 ; 137 ib. 407 ; 140 ib. 173 ; 169 ib. 426 ; 170 ib. 8. 66. 145. 206. 234. 281 ; 171 ib. 8. 9. 88. 144. 202. 242. The practice of demanding a vote of credit by a message from the Crown, has, since 1854, 109 ib. 432, been discontinued.

<sup>3</sup> 285 H. D. 3 s. 875.

<sup>4</sup> 88 C. J. 482, see also West India Relief, 1832, 87 ib. 452.

<sup>5</sup> Sardinia and Turkish Loans, 1855 and 1856, 110 C. J. 142. 406 ; 111 ib. 273.

<sup>6</sup> 115 C. J. 403. 441, &c.

<sup>7</sup> 131 C. J. 55.

<sup>8</sup> 156 C. J. 60, 165 ib. 171 (Civil Lists) ; 86 C. J. 719 (Duchess of Kent and Princess Alexandrina Victoria of Kent) ; 105 ib. 539 (Duke of Cambridge) ; 112 ib. 153 (Princess Royal) ; 118 ib. 69 (Prince of Wales), resolutions agreed to *nem. con.* ; 144 ib. 290 (Prince Albert Edward), &c.

<sup>9</sup> Sir Henry Havelock, 1857, 113 C. J. 9 ; Sir Rowland Hill, 1864, 119 ib. 293 ; widow of Earl of Elgin, 1864, 119 ib. 293 ; Lords Alcester and Wolsley, 1883, 138 ib. 146. 217 ; Lord Kitchener, 1899 and 1902, 154 ib. 230 ; 157 ib. 261 ; Lord Roberts, 1901, 156 ib. 352 ; Lord Cromer, 1907, 162 ib. 354.

<sup>10</sup> 112 C. J. 153 ; 121 ib. 90 ; 144 ib. 355.

demand. A grant based upon an exceptional demand, or a royal message, may be voted either by the committee of the whole house that is appointed to consider the matter, or wholly or partially by the committee of supply. For instance, the grant for the emancipation of the negro was voted in a committee;<sup>1</sup> the grant for the purchase of the Suez Canal shares was voted in committee of supply;<sup>2</sup> and in the case of the demands occasioned by the marriage of the Princess Royal, 1857, the marriage portion, paid out of the revenues of the year, was voted upon estimates by the committee of supply, whilst the annuity granted to the princess was charged upon the Consolidated Fund by a resolution originating in a committee of the whole house,<sup>3</sup> a practice which has been followed on similar occasions. The grants voted in the committee of supply are dealt with by the Appropriation Act, and the grants voted in a special committee, by a bill brought in for that purpose (see p. 496).

Incidental charges necessary to carry on the public service, which are not of the nature of the annual supplies, are voted every session, upon the recommendation of the Crown signified by a minister (see p. 458). Usually these charges are for salaries and other expenses caused by the imposition of novel duties upon the executive government by the legislation of the session.

Messages from the sovereign also are sent to inform Parliament, when an emergency occasions the calling out for service, of the militia, and the army and militia reserve forces, or the embodiment of the Territorial Force.<sup>4</sup> These messages are communicated pursuant to statute and in accordance with the constitutional principle, that warning should be given to Parliament of events which must inflict an increased charge upon the people. These messages are, according to usage, referred to the consideration of a committee of the whole house.

Until a grant of supply has been appropriated by statute to the service and object for which the grant is destined, the treasury, unless otherwise authorized, is not capable of making an issue of the sum so granted from the Consolidated Fund. The introduction of the Appropriation Bill cannot, however, take place until all the grants

<sup>1</sup> 88 C. J. 383. 482.

<sup>2</sup> 131 C. J. 55.

<sup>3</sup> 112 C. J. 170. 175. For earlier examples, see 3 Hatsell, 172; 67 C. J. 377. 380; 69 ib. 254; 71 ib. 220.

<sup>4</sup> 1815, 70 C. J. 399; 1854, 109 ib. 242;

1878, 133 ib. 156; 1882, 137 ib. 399; 1885, 140 ib. 51. 124; 1899, 154 ib. 432; 1914, 169 ib. 411; 30 & 31 Vict. cc. 110, 111, ss. 10. 8; 45 & 46 Vict. c. 48, s. 12; 45 & 46 Vict. c. 49, s. 18; 7 Edw. VII. c. 9. s. 17.

Incidental charges.

Messages, army and militia, reserve and territorial force.

Issues in anticipation of the Appropriation Act.

have been voted for the service of the current year,—a process usually ranging over the period of six months. A more prompt issue must therefore be made of the money granted from time to time for the current service of the Crown. Accordingly, from time to time bills known as Consolidated Fund bills are passed during each session, in pursuance of the provisions of the Exchequer and Audit Departments Act, 1866, and of the Public Accounts and Charges Act, 1891, s. 2. These bills empower the treasury to issue out of the Consolidated Fund, for the service of departments for which grants have been voted, such sums as they may require, in anticipation of the full statutory sanction conferred by the Appropriation Act. The first Consolidated Fund Bill of the session is passed during the month of March. It includes the supplementary grants for the service of the financial year that ends on the then approaching 31st March, together with any excess grants for the preceding financial year that have been agreed to. This bill must receive the royal assent in time to allow of the necessary issues being made before the 31st March, and it is also a necessity that some amount of supply for the service of the ensuing financial year should be made available upon the 1st April.<sup>1</sup> Further Consolidated Fund bills are passed, during the progress of the session, at such times as may be requisite for the maintenance of the public service.<sup>2</sup>

Procedure  
on money  
charges.

The Commons have faithfully maintained the duty and responsibility of the sovereign, and their own, regarding the custody of public money and the imposition of charges upon the people, by standing orders framed especially for that purpose.<sup>3</sup> Three of these

<sup>1</sup> In session 1883 the only supply for the ensuing financial year on which the ways and means resolutions for the Consolidated Fund (No. 1) Bill could be based (see p. 492) was that for the army, while in 1889 no "vote on account" for the civil services, in 1905 no vote for the army, and in 1913 no vote for the navy had been agreed to before the introduction of the bill. Votes for each of the services not included in the supply upon which the ways and means resolutions were based were agreed to in each year before the 31st March, which enabled the treasury to issue for these services part of the money placed at its disposal by the Consolidated Fund (No. 1) Bills. See Debate on Consolidated Fund (No. 1) Bill, 143 Parl. Deb. 4 s. 1225. 1395.

<sup>2</sup> 153 C. J. 398; 156 ib. 282; 160 ib.

312. The amount of the "vote on account" granted since 1896 (see p. 449, n. 1) and the power of the treasury to use for any service for which a vote has been agreed to by the house, the issues authorized to be made out of the Consolidated Fund under the Consolidated Fund (No. 1) Act of each session have rendered unnecessary as a rule Consolidated Fund Bills after the 1st April in anticipation of the Appropriation Bill, 137 Parl. Deb. 4 s. 213; 143 ib. 1219.

<sup>3</sup> 3 Hatsell, 241. The Imperial Diet of Japan, during the session of April, 1892, distinguished themselves by embodying in their procedure the principle of imperial control over the initiation of public expenditure.—(Information supplied by the courtesy of Mr. Kentaro Kaneko.)

standing orders, Nos. 66-68, were the first, and, for more than a century, were the only, standing orders made by the Commons for their self-government; and the regulations prescribed by these standing orders have been from time to time extended and applied.<sup>1</sup>

*S. O. 66-71, Appendix I.*

Under the practice thus established, every motion which in any way creates a charge upon the public revenue,<sup>2</sup> or upon the revenues of India, must receive the recommendation of the Crown, before it can be entertained by the house; and then, the recommendation having been given, procedure on the motion must be adjourned to a future day, and be referred to the consideration of a committee of the whole house.

Unless the recommendation of the sovereign enjoined by these standing orders be signified, in the manner mentioned in this paragraph, the Speaker cannot put the question on a motion which comes within the scope of these standing orders. Accordingly, if any motion, or bill, or proceeding is offered to be moved, whether in the house or in a committee, which requires, but fails to receive, the recommendation of the Crown, it is the duty of the chair to announce that no question can be proposed upon the motion, or to direct the withdrawal of the bill.<sup>3</sup> In like manner, after the question has been proposed on an amendment, and it has appeared that the amendment would vary the incidence of taxation or increase the charge upon the Consolidated Fund,<sup>4</sup> the Speaker has declined to put the question. In pursuance of the standing orders which regulate the financial procedure of the house, committees of the whole house are appointed to sanction by their resolutions grants of public money, or the imposition of a charge upon the people. The committee is appointed, either before the commencement or after the close of public business (see p. 219) by a motion that "this house will," on

*Recommendation of the Crown signified.*

*S. O. 66-71, Appendix I.*

<sup>1</sup> The first grant of public money proposed upon a formal recommendation of the Crown, took place on 5th March, 1706, when Mr. Secretary Harley informed the house that her Majesty had been made acquainted with a petition praying for a grant of 500,000*l.*, presented by sufferers from the damage the French troops inflicted on the islands of St. Nevis and St. Christopher, during Feb. and March 1705, 15 C. J. 323.

<sup>2</sup> In the case of Lords Alcester and Wolseley, the grant of a pension was submitted to the House of Commons by a royal message (see p. 454). Whilst the

house was acting upon the message, a change from a pension to an equivalent sum of money was thought desirable; and the grant of the sum of money was founded upon a resolution of a committee appointed upon the recommendation of the Crown, 138 C. J. 217.

<sup>3</sup> 3 Hatsell, 168, *n.*; 55 C. J. 396; 59 ib. 335; 63 ib. 266; 142 H. D. 3 s. 1302; 164 ib. 173. 997; 241 ib. 1591; 16 H. C. Deb. 5 s. 1902; 167 C. J. 61, 35 H. C. Deb. 5 s. 1495; 168 C. J. 53, 51 H. C. Deb. 5 s. 707.

<sup>4</sup> 160 C. J. 303, 148 Parl. Deb. 4 s. 1515.

a future day, " resolve itself into a committee " to consider the matter specified in the motion, and at this stage no statement can be made.<sup>1</sup> If satisfied that the motion will receive the royal recommendation, the Speaker proposes the motion as a question from the chair, and thereupon a minister of the Crown signifies to the Speaker and to the house, that the motion is recommended by the Crown; and the recommendation, and the name of the member who signified it, are recorded upon the journal of the house.

Public  
charges in  
bills.

When the main object of a bill is the creation of a public charge, resort must be had to this procedure before the bill is introduced, and upon the resolution of the committee of the whole house when agreed to by the house the bill is ordered to be brought in.<sup>2</sup> If the charge created by a bill is a subsidiary feature, resulting from the provisions it contains, the royal recommendation and preliminary committee are not needed before the introduction of the bill, but before the clauses and provisions creating such charges can be considered by a committee on the bill, a resolution sanctioning them<sup>3</sup> must be passed by a committee of the whole house appointed upon the recommendation of the Crown, and must be agreed to by the house.<sup>4</sup> In the presentation copies of the bill, the clauses and provisions which create these charges are printed in italics, to mark that they do not form part of the bill, and that no question can be proposed thereon, unless vitality has been imparted to them by a committee resolution.<sup>5</sup> Amendments offered to a bill which require but have not received this sanction, are not proposed from the chair,<sup>6</sup> or, if agreed to inadvertently, are cancelled.<sup>7</sup> The Speaker also has declined, in like manner, to put the question on an amendment

<sup>1</sup> 149 Parl. Deb. 4 s. 1084; 9 H. C. Deb. 5 s. 254.

<sup>2</sup> 55 C. J. 396; 98 ib. 167; 101 ib. 615; 104 ib. 412; 113 ib. 31; 147 ib. 67. 79, 1 Parl. Deb. 4 s. 315.

<sup>3</sup> When the scope of a clause exceeded the power given by the resolution on which the bill was founded, the chairman declined to put the question thereon, 138 C. J. 234.

<sup>4</sup> Debate on such a resolution is confined to the terms of the resolution and must not be extended to the bill itself, 161 Parl. Deb. 4 s. 335; 83 H. C. Deb. 5 s. 1700.

<sup>5</sup> 177 H. D. 3 s. 1308; 252 ib. 196. 533. &c. On an intimation from the Speaker,

a bill reported to the house by a select committee containing a money clause not printed in italics was recommitted to the committee to set the matter right, 98 C. J. 487, and a similar course was followed in the case of a bill in which a clause imposing a stamp duty had been inserted without the necessary resolution by a standing committee, 162 C. J. 196, 174 Parl. Deb. 4 s. 1068. See also 177 ib. 718. The house is not precluded from discussing on the second reading of the bill the clauses printed in italics, 24 Parl. Deb. 4 s. 185.

<sup>6</sup> 112 C. J. 393; 137 ib. 345; 138 ib. 234; 137 H. D. 3 s. 1897; 164 ib. 173; 161 Parl. Deb. 4 s. 854; 180 ib. 825.

<sup>7</sup> 111 C. J. 370.

which would have varied the incidence of taxation (see also p. 505).<sup>1</sup>

In accordance with the provisions of No. 71, that consideration of a charge upon the people "shall not be presently entered upon, but shall be adjourned" to a future day, the resolutions of the committees of supply and ways and means, and committees of the whole house upon the appointment of which the recommendation of the Crown was signified, are not considered on the day on which they are reported from the committee, but on a future day appointed by the house; <sup>2</sup> and bills brought in upon such resolutions are, also, not passed through more than one stage at the same sitting of the house.<sup>3</sup> When for any reason it has been necessary to take more than one stage of such a bill on one day an order is made by the house for the purpose after notice given.<sup>4</sup>

Intervals between stages of resolutions and bills imposing charges, S. O. 71, Appendix I.

Examples may be given of matters which need recommendation from the Crown; namely, advances on the security of public works, when funds in addition to the funds already available for such purposes must be provided to meet such advances; <sup>5</sup> advances to landlords or tenants beyond the scope and objects of the Public Works Loans Acts <sup>6</sup> (see p. 465); bills relating to savings banks which create a charge upon the Consolidated Fund or other public liability; <sup>7</sup> the imposition of stamp duties by private or provisional order bills; <sup>8</sup> the extension of the time for the repayment of the deposit which has become liable to forfeiture in the case of a private bill; <sup>9</sup> the release or compounding of sums due to the Crown; <sup>10</sup> the

Matters needing recommendation.

<sup>1</sup> 123 C. J. 157, 191 H. D. 3 s. 1878; 41 H. C. Deb. 5 s. 3114.

<sup>2</sup> A resolution from a committee of the whole house, authorizing the collection of fees in the Court of Bankruptcy by means of stamps, was reported forthwith, as the fees were not increased, but the mode of collection only altered, 25th July, 1849, 104 C. J. 567; see also the Speaker's remarks, 315 H. D. 3 s. 789. Such resolutions have been considered by order of the house immediately after their report from committee of the whole house, 165 C. J. 103. 122. For similar procedure in cases of reports of supply and ways and means, see p. 494.

<sup>3</sup> 239 H. D. 3 s. 1419; 12 H. C. Deb. 5 s. 136. On the 5th May, 1893, the subsequent stages of the Customs and Inland Revenue Bill were allowed to be taken immediately after the recommitment of the

bill, as the only amendment made on recommitment was to strike out a clause repealing certain exemptions, thus leaving the law as it stood; 148 C. J. 253.

<sup>4</sup> 165 C. J. 304, 305, 310, 312; 166 ib. 106, 118, 424; 169 ib. 431, 432, 449, 462; 170 ib. 28; 171 ib. 140, 259. See also debate on a motion for this purpose which was withdrawn, 171 ib. 138, 84 H. C. Deb. 5 s. 564.

<sup>5</sup> 72 C. J. 220; 57 Geo. III. c. 34.

<sup>6</sup> 136 C. J. 260.

<sup>7</sup> 108 C. J. 558; 118 ib. 55; 130 ib. 1791.

<sup>8</sup> 132 C. J. 180; 133 ib. 106; 135 ib. 95, 187; 146 ib. 353; 153 ib. 239; 155 ib. 122; 159 ib. 157.

<sup>9</sup> 140 C. J. 149, 169, 184; 145 ib. 257.

<sup>10</sup> 75 C. J. 152, 167; 98 ib. 52. The royal recommendation was signified to a clause about to be proposed for that purpose in committee on a bill, 116 ib. 285.

repeal of an exemption from an existing duty, as the burthen of the duty is thereby augmented ;<sup>1</sup> the charge of certain payments upon the Civil Contingencies Fund ;<sup>2</sup> a proposal to repeal an existing drawback on the export of sugar, as it effected an increase of charge upon the importers who desired to export sugar ;<sup>3</sup> and a provision granting costs against the Crown or the revenue officers, and thereby imposing a public charge.<sup>4</sup>

Remission  
of ad-  
vances.

Prior to 1875, it had been held that a proposal for the remission of statutory advances made by the treasury did not come within the standing orders. This exemption no longer exists, as these advances are made recoverable by statute, as specialty debts due to the Crown.<sup>5</sup>

Recom-  
menda-  
tion of  
guaran-  
tees.

Contingent or prospective charges upon the public revenue, and upon the revenues of India, come within the purview of these standing orders ; therefore before clauses in a bill can be considered, which apply the Consolidated Fund, money to be voted by Parliament<sup>6</sup> or the revenues of India<sup>7</sup> as a guarantee for sums to be raised, paid, or borrowed for any purpose, such clauses must receive the preliminary authority of a committee resolution, founded upon the recommendation of the Crown ; and the guarantee clauses in the bill must be printed in italics.<sup>8</sup>

Instruc-  
tions  
needing  
recom-  
menda-  
tion.

No instruction to a committee on a bill (see p. 364) can be proposed which would enable the committee to add provisions to the bill creating a charge<sup>9</sup> or imposing a tax<sup>10</sup> upon the people, unless

<sup>1</sup> 109 C. J. 334.

<sup>2</sup> 106 C. J. 250.

<sup>3</sup> 120 C. J. 313.

<sup>4</sup> 166 H. D. 3 s. 1593.

<sup>5</sup> 38 & 39 Vict. c. 89, s. 33 ; 136 C. J. 360.

<sup>6</sup> 113 C. J. 317 ; 122 ib. 131.

<sup>7</sup> 114 C. J. 55. 315 ; 115 ib. 455 ; 121 ib. 156, &c.

<sup>8</sup> 151 H. D. 3 s. 1519 ; 154 ib. 969.

<sup>9</sup> An instruction to extend the provisions of the Education (Scotland) (Sutherland and Caithness) Bill to Scotland generally, Notices of Motions, sess. 1875, p. 1430, and an instruction in the case of the Local Taxation (Customs) Bill to sanction the admission of clauses empowering the treasury to make a loan, were on this account ruled to be irregular. The words, "for an advance by way of loan from the treasury," were consequently withdrawn from the notice, Notices of Motions, sess. 1890, p. 1575.

See also the Speaker's refusal to put the question on an instruction, Dublin Barracks Bill, 147 C. J. 243, and rulings on instructions in the case of the Workmen (Compensation for Accidents) Bill, and the Education (Scotland) Bill, which proposed to repeal a statutory limit of the amount of the education grant, 49 Parl. Deb. 4 s. 1153 ; 51 ib. 641. On one occasion, the royal recommendation was refused to an instruction : but the refusal shewed that the motion for the instruction should not have been proposed from the chair, 93 C. J. 204.

<sup>10</sup> Instructions in the case of Finance Bills to insert provisions altering the composition duty, so as to make it correspond with the death duties imposed by the Bill, to substitute for the coal duty other taxes and to put taxes in the bill for which no preliminary resolution had been agreed to, 24 Parl. Deb. 4 s. 1218 ; 95 ib. 755.



such instruction receives the recommendation of the Crown. An instruction has been ruled out of order as it imposed a charge on rates.<sup>1</sup>

In pursuance of standing orders Nos. 66 and 67, a petition praying directly or indirectly for an advance of public money ; <sup>2</sup> for compounding or relinquishing any debts due to, or other claims of, the Crown ; <sup>3</sup> or for remission of duties or other charges payable by any person : <sup>4</sup> or for a charge upon the revenues of India,<sup>5</sup> will only be received if recommended by the Crown,<sup>6</sup> and, in case of debts due to the Crown, on proof of the steps taken for the recovery of such debts. Petitions distinctly praying for compensation, or indemnity for losses, out of the public revenues are refused, unless recommended by the Crown : but petitions are received praying that compensation may be made for losses contingent upon the passing of bills pending in Parliament.<sup>7</sup>

Petitions  
for public  
money.  
S. O. 66,  
67, Ap-  
pendix I.

As is-subsequently explained (see p. 480), the constitutional principle which vests in the Crown the sole responsibility of incurring national expenditure, forbids an increase by the Commons of a sum demanded on behalf of the Crown for the service of the state. This principle, however, is apparently disregarded when the recommendation of the Crown is given to a resolution empowering the expenditure of public money which, framed in general terms, places no limitation on the amount of expenditure to be authorized by the resolution. As the resolution sanctions, without any specific limitation, the application of money to be provided by Parliament to certain purposes, when the clauses in a bill founded upon such a resolution are before the committee, the freedom of action sanctioned by that resolution can be exercised. The committee is not bound by the terms of the provisions which the ministers of the Crown have inserted in the bill ; and any member may propose to increase the grants specified in these clauses or to extend the application of the provisions of the bill, whatever may be the cost resulting therefrom, so long as the power conferred by the royal recommendation is not exceeded. Acting on this principle, when, in 1812, a committee was considering a message from the Prince Regent recommending, in general terms, provision to be made for the family of Mr. Spencer

Royal re-  
commen-  
dation in  
general  
terms.

<sup>1</sup> 43 H. C. Deb. 5 s. 706.

<sup>2</sup> 78 C. J. 261. 285 ; 90 ib. 42. 487. 507 ;  
93 ib. 585 ; 111 ib. 247 ; 112 ib. 219 ; 119  
ib. 177.

<sup>3</sup> 75 C. J. 167 ; 81 ib. 66 ; 83 ib. 212.

<sup>4</sup> 81 C. J. 353 ; 92 ib. 372.

<sup>5</sup> 111 C. J. 366.

<sup>6</sup> 73 C. J. 157 ; 74 ib. 422 ; 87 ib. 571 ;  
90 ib. 487 ; 104 ib. 223, &c.

<sup>7</sup> 90 C. J. 136 ; 92 ib. 469.

Perceval, amendments were permitted for increasing the provision proposed by the ministers.<sup>1</sup> This practice has been supported by rulings from the chair, though, on the last occasion, not without remarks which deserve careful consideration.<sup>2</sup>

No proposal of new taxes except by a minister.

The principle that the sanction of the Crown must be given to every grant of money drawn from the public revenue, applies equally to the taxation levied to provide that revenue.<sup>3</sup> No motion can therefore be made to impose a tax, save by a minister of the Crown, unless such tax be in substitution, by way of equivalent, for taxation at that moment submitted to the consideration of Parliament<sup>4</sup>; nor can the amount of a tax proposed on behalf of the Crown be augmented,<sup>5</sup> nor any alteration made in the area of imposition.<sup>6</sup> In like manner, no increase can be considered either of an existing, or of a new or temporary tax for the service of the year, except on the initiative of a minister, acting on behalf of the Crown; nor can a member other than a minister move for the introduction of a bill framed to effect a reduction of duties, which would incidentally effect the increase of an existing duty, or the imposition of a new tax, although the aggregate amount of imposition would be diminished by the provisions of the bill.

Duties not to be increased by committee on bill.

When a schedule of duties has been reported from a committee, and agreed to by the house, the committee on the bill cannot increase such duties, or add any articles not previously voted: but if the duties so voted are less than those payable under the existing law, it is competent for the committee on the bill to increase them, provided such increase be not in excess of the existing duties.

Alteration of proposed reduction of taxation.

The house can make amendments which diminish the amount of

<sup>1</sup> 23 H. D. 1 s. 199; Perceval, ii. 303.

<sup>2</sup> 263 H. D. 3 s. 53; 354 ib. 1898.

<sup>3</sup> This principle and the practice of the house to enforce its observance do not apply to clauses conferring a power of taxation in bills dealing with the constitutions of the dominions or other parts of the British Empire, 44 H. C. Deb. 5 s. 857.

<sup>4</sup> Thus on the 12th April, 1916, the chairman, in allowing an amendment to be moved in committee on the Finance (New Duties) Bill with the object of altering the method of levying a new tax, insisted that the amendment should be so framed as not to increase the charge that would be imposed on any individual payer of the

tax, 81 H. C. Deb. 5 s. 1812.

<sup>5</sup> When it appeared from the debate that an amendment proposed to a resolution reported from the committee of ways and means would increase the charge, the Speaker ruled the amendment out of order, 171 C. J. 108.

<sup>6</sup> On the 14th March, 1844, Mr. Howard Elphinstone proposed a committee of the whole house to consider the Stamp Acts, with the view of imposing the same amount of probate duty on real estate as was paid on personal property. Objection being taken, the Speaker observed on the irregularity of the proceedings, and the motion was withdrawn, 73 H. D. 3 s. 1052.

a reduction of taxation, or postpone the day when the reduction takes place, although the amendments may increase to that extent the charges proposed to be levied upon the people. So long as an existing tax is not increased, any modification of the proposed reduction may be introduced in the committee on the bill, and is regarded as a question, not for increasing the charge upon the people, but for determining to what extent such charge shall be reduced. Thus, on the 19th March, 1845, resolutions were reported from a committee on the Customs Acts by which the import duties on glass were reduced from and after a prescribed date. In the committee on the bill introduced upon those resolutions, it was proposed to postpone the period at which such reduction of duty would take place; and the Speaker ruled privately that the amendment was regular, although it postponed the relief from taxation beyond the time voted by the preliminary committee, and agreed to by the house.<sup>1</sup>

As a final illustration of the way in which the reduction of public charges is dealt with, it may be mentioned that, as a "drawback" Draw-backs. is a fiscal arrangement made to facilitate the exportation of goods liable to excise duties, and is so far an alleviation of taxation, a provision creating a "drawback" can be considered without recommendation from the Crown, or a preliminary committee resolution. Thus in 1857, the grant of a drawback upon sugar imported into the Isle of Man was inserted in the Customs Bill, although the resolutions affecting the sugar duties voted in the committee of ways and means, upon which the bill was founded, did not touch duties there levied. In like manner, upon the consideration of the Lords' amendments to a bill which was designed to relieve the Consolidated Fund of charges to the amount of 20,000*l.*, an amendment to the bill consequent upon a Lords' amendment, which limited the extent of that relief to 18,000*l.*, was held to be admissible as not imposing an addition to the existing charge on the Consolidated Fund.<sup>2</sup>

Doubts have been entertained whether, on the report stage of resolutions from a committee by which existing duties are reduced, Questions of amount of duties on report. it is regular to propose any amendment by which such reductions would be negatived, or the amount of reduction diminished. It has been contended that such an amendment would, in effect, increase a charge upon the people, which cannot be done with the Speaker in

<sup>1</sup> 100 C. J. 206. See also proceedings on Sugar Bill, 1848, 103 ib. 853.

<sup>2</sup> 193 H. D. 3 s. 1887. 1920; see also p. 515, n. 3.

the chair. It is clear, however, that, if the amendment were made, it would merely leave unchanged the duty existing by law, or would reduce it ; and that the charge upon the people would not be increased. It would, indeed, be an anomalous form to report such resolutions to the house at all, unless the house could disagree to or amend them, and there are numerous cases in which amendments of this character have been proposed, without objection, on report.<sup>1</sup>

Exemptions from the standing orders touching charges on the people. Use of existing charges.

Unless a new and distinct charge be imposed upon the public revenue, the standing orders which regulate financial procedure are not applicable. This principle applies to cases where it is proposed to authorize advances on the security of public works, out of moneys already set apart for such purposes.<sup>2</sup> For the same reason, it was held, 30th June, 1857, that a bill to repeal a section of the Superannuation Act that created a superannuation fund by means of annual deductions from official salaries, did not come within the scope of these standing orders, because, although the bill effected a diminution of public income, it did not increase salaries or the public charge in respect of salaries.<sup>3</sup> The same exemption also applies to legislation which varies the appropriation of the proceeds of an existing charge upon public revenue, whereby no new burthen is imposed ; such, for instance, as the University Education (Ireland) Bill, 1882, which diverted to the use of the Royal University of Ireland, grants out of the Consolidated Fund which were payable by statute to the Queen's Colleges in Ireland and the Public Buildings (Expenses) Bill of 1913 which authorized the expenditure of the surplus of a sum allocated to certain public buildings by section nine of the Finance Act, 1908.<sup>4</sup> This principle was applied to the Local Government Bill of 1888, to the Local Taxation (Customs and Excise) Bill of 1890, the Agricultural Land Rating and the Agricultural Rates, Congested Districts, &c. (Scotland) Bills of 1896, the Tithe Rent-charge (Rates) Bill of 1899, and other bills which diverted from the exchequer to the Local Taxation account for the purposes of the bills a portion of the probate duty or other specified duties, because, although thereby certain sums would be intercepted, and the public revenue would be so far diminished, no fresh payment was required

<sup>1</sup> Customs Act Report, 15th, 16th, and 17th March, 1846, 101 C. J. 323. 335. 349.

<sup>2</sup> Railways (I.) Bill, 1847 (advance of 16,000,000*l.*), (Lord G. Bentinck) ; Drainage (I.) Act, 5 & 6 Vict. c. 89 ; Public Works (Manufacturing Districts) Bill,

1863 ; Drainage (I.) Act, 9 & 10 Vict. c. 4, ss. 10. 31. 51 ; Public Works (I.) Act, 9 & 10 Vict. c. 1.

<sup>3</sup> 146 H. D. 3 s. 689.

<sup>4</sup> 14 H. L. Deb. 5 s. 1728.

of the Consolidated Fund, or out of moneys provided by Parliament, nor was any additional charge imposed upon the people.<sup>1</sup> During the session of 1890-91 a ruling to this effect was also made from the chair regarding the Russian Dutch Loan Bill,<sup>2</sup> while in session 1914-16 the American Loan Bill was introduced on motion, as the loan authorized to be raised under its provisions was in substitution for, and not in addition to, powers of borrowing authorized by a previous Act.<sup>3</sup> Standing orders Nos. 66 and 71 do not apply to bills dealing with local loans.

Legislation regarding moneys administered by the public works loan commissioners affords another mode of illustrating the foregoing principle. By the National Debt and Local Loans Act, 1887 (50 & 51 Vict. c. 16, s. 6), the national debt commissioners are empowered to issue to the various commissioners mentioned in the Act, the sums required for local loans to an amount not exceeding that authorized by Parliament; consequently, the particular mode of application of those sums does not increase the total amount available for loans. The Act of 1887 created a Local Loans Fund, under the control of the national debt commissioners, which receives the repayments of the principal of local loans, and the income derived from interest thereon. The Act made the Consolidated Fund a security in case of deficiency; and the resolution which sanctioned the liability so imposed upon the Consolidated Fund was, with the recommendation of the Crown, voted in committee.<sup>4</sup> The provisions of the standing orders regarding the imposition of a charge were thus fully complied with by the procedure upon the National Debt and Local Loans Bill of 1887; and, as compliance with the standing orders in respect of what may be termed the principal Act is held applicable to all subsequent bills which fulfil its purposes, since the passing of the National Debt and Local Loans Act, 1887, annual Public Works Loans Bills are introduced without a preliminary recommendation from the Crown. On the same principle, the Land Purchase (Ireland) Bill, in session 1888, was introduced without a

Moneys in hands of public works commissioners.

<sup>1</sup> 41 Parl. Deb. 4 s. 1698, 42 ib. 1324. An amendment to the Finance Bill of 1905, whereby the National Debt Charge would have been increased from twenty-eight million pounds to twenty-nine million pounds was allowed to be moved in accordance with the principle described in the text, because it was proposed that the additional million pounds should be

paid by the Inland Revenue Commissioners to the National Debt Commissioners out of the proceeds of the estate duty, 160 C. J. 208, 146 Parl. Deb. 4 s. 1273.

<sup>2</sup> 354 H. D. 3 s. 171.

<sup>3</sup> 74 H. C. Deb. 5 s. 1219. 1272.

<sup>4</sup> 142 C. J. 303.

preliminary committee because the financial operations of the bill were based on the Local Loans Fund under the Act of 1887,<sup>1</sup> and in session 1909 the Small Holdings (No. 2) Bill, which authorized payment of compensation for disturbance in certain cases, as the payment was charged upon the Small Holdings account which had been constituted under an Act of a previous session.

Other exemptions.

Other cases of procedure may be mentioned in which the recommendation of the Crown has not been held necessary, such as the transfer of certain charges from the Consolidated Fund to the supplies annually voted by Parliament, as no increased charge upon the people was effected; <sup>2</sup> an exemption from penalties due to the Crown created by the Under Secretaries Indemnity Bill of 1864; <sup>3</sup> charges imposed for services rendered; <sup>4</sup> bills relating to savings banks, when solely of a legal and administrative character; <sup>5</sup> bills applying the land revenues of the Crown to improvements of Crown property, although by statute such land revenues are carried to the Consolidated Fund,<sup>6</sup> or applying to government works the proceeds of the sale of government property; <sup>7</sup> and a provision directing the payment into the exchequer of the profits of "controlled establishments" beyond the amount divisible under statute as being a limitation of the profit accruing from orders placed with them by government departments and not a tax.<sup>8</sup>

Indirect charges created by guarantees.

The rule that recommendation from the Crown must be given to a guarantee based on the public, or Indian revenues (see p. 460), is only applicable to a provision which creates a direct, though prospective, charge upon the public revenue. The application of this principle has received the following illustrations from transactions with the Government of India.

<sup>1</sup> 330 H. D. 3 s. 1550.

<sup>2</sup> 147 H. D. 3 s. 1220. Similarly in 1903 in committee on the Ireland Development Grant Bill, which had been brought in upon a resolution making the grant a charge upon the Consolidated Fund amendments were introduced providing that the grant should be paid in each year out of money to be provided by Parliament.

<sup>3</sup> 175 H. D. 3 s. 83.

<sup>4</sup> Postage Bill, 1840; Parcel Post Bill, 1882; Telegraph Acts Amendment Bill, 1884-5; Postal and Telegraph Rates Bill, 1915. In the last case a resolution was agreed to in committee of means but its

consideration on report was not proceeded with in view of the Speaker's ruling that it was unnecessary, 170 C. J. 243. 267, 74 H. C. Deb. 5 s. 1035. 2034. 2117. See also resolution in case of Electric Telegraphs Bill, 123 C. J. 350.

<sup>5</sup> 117 C. J. 90.

<sup>6</sup> Newborough Church Bill, 1 Will. IV. c. 59; Hainault Forest Bill, 1851; Pimlico Improvement Bill, 1852; Sunk Island Roads Bill, 1852; Whychwood Forest Bill, 1853.

<sup>7</sup> 126 Parl. Deb. 4 s. 235.

<sup>8</sup> Munitions of War Bill, Clause 4, 72 H. C. Deb. 5 s. 2002.

The Government of India Act, 1915, s. 22, which re-enacts Indian section 55 of the Act of 1858, prescribes that the revenues of India shall not be applied to expeditions beyond the frontiers, without the consent of both houses of Parliament; and if the resolution whereby this consent is given follows the directions of the Act, and is unaccompanied by a guarantee upon the exchequer, the resolution is exempt from the operation of the standing orders and can be considered by the House of Lords without a previous communication from the Commons.<sup>1</sup> The resolution, however, which, in 1867, was submitted to Parliament to empower the employment of Indian native forces in the Abyssinian War, was accompanied by a provision that the contingent charges, which might arise out of the expedition, should be defrayed by the exchequer. The resolution approving that application of the Indian revenues, as it was accompanied by that proviso, was consequently moved upon recommendation from the Crown, and was referred to a committee; and as the initiative in the imposition of charges rests with the Commons, the resolution was subsequently communicated to the Lords, and their concurrence obtained.<sup>2</sup> When a resolution authorizing the employment out of India of troops, chargeable on Indian revenues, has created only a provisional liability, which could not arise unless the contingency creating such liability took place, and a grant was voted by Parliament towards the expenses of the expedition, it has been held that the resolution was not brought by that proviso within the scope of the standing orders. Such a resolution has been considered therefore with the Speaker in the chair, and submitted directly to the Lords without previous communication from the Commons.<sup>3</sup>

A grant of public money can be obtained, not only without a previous signification of the royal recommendation, but against the wish of the ministers of the Crown, by a motion, made in accordance with the provisions of standing orders Nos. 69 and 71, for the appointment of a committee of the whole house, upon a future day, to consider a resolution for an address to the Crown, asking for the issue of a sum of money for the purposes therein assigned, concluding with an assurance, "that this house will make good the same." <sup>4</sup>

Addresses for public money without royal recommendation. S. O. 69, 71, Appendix I.

<sup>1</sup> Afghan War, 111 L. J. 13, 134 C. J. 23; Egyptian Expedition, 114 L. J. 351, 137 C. J. 416; Burmese Expedition, 118 L. J. 53, 141 C. J. 57; Tibet Political Mission, 136 L. J. 109, 159 C. J. 120.

<sup>2</sup> 123 C. J. 15, 18, 26; 100 L. J. 14.

<sup>3</sup> 117 L. J. 104, 140 C. J. 89; 146 L. J. 417, 169 C. J. 463; 147 L. J. 20, 170 C. J. 28.

<sup>4</sup> 83 C. J. 456; 95 ib. 474 (Church Extension); 96 ib. 57; 98 ib. 415 (Danish Claims); 119 C. J. 205, 174 H. D. 3 a.



Resort is had to this procedure on occasions when a public monument to a deceased statesman is desired.<sup>1</sup> If a motion for an address for public money is submitted to the house in any other manner, the Speaker declines to propose the question to the house,<sup>2</sup>—a rule which has been held to apply to an address to the Crown to offer a reward for the apprehension of a witness who had absconded,<sup>3</sup> and to an address for the issue of gun-metal to be cast into a statue of a distinguished soldier.<sup>4</sup>

Methods  
of advo-  
cating  
public ex-  
penditure.

To a certain extent, evasions are, by usage, permitted of the restriction imposed by the standing orders upon proposals for the expenditure of public money. Bills devising a large scheme for public expenditure, accompanied by provisions for the application of the same, have been brought in upon motion, the money clauses being printed in italics.<sup>5</sup> In such cases, the principle of the bill is discussed, and, if approved on behalf of the Crown, the necessary pecuniary provision is subsequently made; otherwise further progress of the bill is prevented by the refusal of the royal recommendation. In like manner, motions advocating public expenditure, or the imposition of a charge, if the motion be framed in sufficiently abstract and general terms, can be entertained, and agreed to by the house.<sup>6</sup> Resolutions of this nature are permissible because, having no operative effect, no grant is made or burthen imposed by

1922 (Mr. Bewicke's case). On 21st May, 1811, the Commons addressed the Prince Regent to pay Mr. Palmer's arrears of percentage, amounting to 54,000*l*. The Lords took notice of this vote for payment of a debt, which they had denied to be due. The Prince Regent returned an answer declining to issue the money, being the first instance of such a refusal. A motion by Mr. Whitbread to censure ministers for this answer was negatived, 66 C. J. 357. 383, 20 H. D. 1 s. 343, Colchester, ii. 152. 332. The address to the Crown praying for some signal mark of royal favour on behalf of a retiring Speaker is moved in the house in this form without a preliminary committee, 139 C. J. 72, &c.

<sup>1</sup> Sir Robert Peel, 105 C. J. 512; Viscount Palmerston, 121 ib. 100; Earl of Beaconsfield, 136 ib. 230; Mr. Gladstone, 153 ib. 224; Marquis of Salisbury, 159 ib. 198; Sir Henry Campbell-Bannerman, 163 ib. 191. The same procedure was followed in the case of public monuments

to Field Marshal Earl Roberts, 170 ib. 20, and Field Marshal Earl Kitchener, 171 ib. 108. Addresses for monuments to Lord Chatham in 1778, and Mr. Pitt in 1806, were voted without a committee, being before the date of the standing order.

<sup>2</sup> 98 C. J. 321; 164 H. D. 3 s. 997.

<sup>3</sup> 106 C. J. 188.

<sup>4</sup> 125 C. J. 355. 362.

<sup>5</sup> Railways (Ireland) Bill, 89 H. D. 3 s. 773; Electric Telegraphs Bill, 191 ib. 678; Railways (Ireland) Bill, 209 ib. 1952.

<sup>6</sup> National Monuments, &c., 99 C. J. 206; Emigration, 103 ib. 600; River Thames (amendment on going into committee of supply), 113 C. J. 294, 151 H. D. 3 s. 1168; National Defences, 114 C. J. 318; Recreation Grounds, 115 ib. 246; Sailors' Homes, 118 ib. 181; County Court Judges (salaries), 124 ib. 289; Harbours of Refuge, 117 ib. 182, 126 ib. 98, 131 ib. 374; Irish Sea Coast Fisheries, 129 ib. 120; Volunteer Equipments, 145 ib. 187, &c.



their adoption. On one occasion, the house declined to receive a report from a select committee which proposed compensation for losses incurred by certain patentees, because it had not been recommended by the Crown,<sup>1</sup> but this precedent has not governed the usage of the house regarding resolutions agreed to by select committees advocating an outlay of public money (see p. 487).

It follows, as a matter of course, that a motion to alleviate the burthens upon the people is not within the scope of the standing orders relating to the imposition of charges upon the people. A bill for diminishing or repealing a tax or other public burthen, unless the imposition of a new tax is proposed by way of substitution, is introduced without the royal recommendation or preliminary committee stage.<sup>2</sup> Amendments, also, strictly confined to relief from pecuniary burthens, can be considered both in committee and with the Speaker in the chair (see p. 506).

IN ENGLAND, as in many other countries of Europe, the origin of taxation may be referred to the feudal aids and services, due from the tenants of the crown to their feudal superior. The greater portion of the soil of England was held by military service, and the councils of the Norman kings, being composed of the tenants-in-chief of the Crown (see p. 14), granted and confirmed the aids and services to which the king, as their feudal superior, was entitled.

After the property in land had undergone many changes and subdivisions, and the commonalty had grown in numbers and wealth, the taxation became less feudal in its character; and the Commons assumed their place as an estate of the realm in Parliament, and represented wealthy communities. The development of the principle of representation of the people in connection with taxation has been already dealt with (see p. 15), and from the establishment of the Model Parliament in 1295, closely followed by the renewed Confirmation of the Charters, may be dated the practical control of Parliament over direct taxation.<sup>3</sup> The popular voice being thus admitted in

Reduction of public charges.

Part II.  
**THE HOUSE OF COMMONS.**  
Origin of parliamentary taxation.

Growth of the Commons' right of supply.

<sup>1</sup> 92 C. J. 478.

<sup>2</sup> Repeal of stamp duty on admission to corporations, and repeal of  $4\frac{1}{2}$  per cent. duties, 93 C. J. 483. 822; repeal of duty on bricks, 94 ib. 132; Penny Postage Bill, 95 ib. 542; Stamp Duty on Policies of Insurance, 99 ib. 250; Paper Duty Repeal Bill, 115 ib. 111. See also the Speaker's ruling in regard to the remission of land

tax under the Agricultural Rates, Congested Districts, &c. (Scotland) Bill, 42 Parl. Deb. 4 s. 1324.

<sup>3</sup> See Maitland, Const. Hist. 96. The document known as *De tallagio non concedendo*, which declared, "That no tallage or aid shall be taken or levied without the good will and assent of the archbishops, bishops, earls, barons, knights,

matters of taxation, the laity were henceforth taxed by the votes of their representatives in Parliament. The lords spiritual and the lords temporal voted separate subsidies for themselves; and from the reign of Edward I., the clergy, as a body, granted subsidies, either as a national council of the clergy, in connection with the Parliament, or, at a later period, in Convocation, until the surrender or disuse of their right in the reign of Charles II.<sup>1</sup>

Commons' right to originate grants.

At length, when the Commons had increased in political influence, and the subsidies voted by them had become the principal source of national revenue, they gradually assumed their present position in regard to taxation and supply, and included the Lords as well as themselves in their grants. So far back as 1407, it was stated by King Henry IV., in the ordinance called "The Indempnity of the Lords and Commons," that grants were "granted by the Commons, and assented to by the Lords." That this was not a new concession to the Commons is evident from the words that follow, viz. "That the reports of all grants agreed to by the Lords and Commons should be made in manner and form as hath hitherto been accustomed; that is to say, by the mouth of the Speaker of the House of Commons for the time being."<sup>2</sup>

Taxes by prerogative.

Concurrently with parliamentary taxation, other imposts were formerly levied by royal prerogative with the consent of Parliament: but none of these survived the Revolution of 1688.<sup>3</sup> Since that time the public revenue of the Crown has been dependent upon Parliament, and is derived either from annual grants for specific public services, or from payments already secured and appropriated by Acts of Parliament, and commonly known as charges upon the Consolidated Fund (see p. 501).

Action of the Commons on royal demand for supply. S. O. 14, Appendix I.

The action taken by the House of Commons upon the demand of aid and supply for the public service made by the speech from the throne (see p. 160), is the appointment, pursuant to standing order No. 14, of those committees of the whole house, which are known as the

*burgesses, and other freemen of the land,*" is not now considered to have been a statute, although so held by the judges in 1637. Its recital, however, in the Petition of Right thenceforth gave it the force of law, Hallam, *Mid. Ages*, iii. 4, *n.*, Stubbs, *Sel. Ch.* 487.

<sup>1</sup> Regarding the origin of Convocations, and of their time of meeting, see the *Parliamentary Original and Rights of the Lower House of Convocation*, by Bishop

Atterbury, p. 7, 4to, 1702. They are still summoned to meet at the same time as the Parliament, but from 1717 until within the last half of last century, were not permitted to transact any business. See *Debates*, 1852-53, on the *Proceedings of Convocation*, 123 H. D. 3 s. 247. 277; 124 ib. 978.

<sup>2</sup> 3 Rot. Parl. 611.

<sup>3</sup> Bill of Rights, art. 4.

committee of supply and the committee of ways and means. Motions setting up these committees are made immediately after the house agrees to the address in answer to the speech from the throne, and are put forthwith from the chair, no debate being permitted thereon.<sup>1</sup>

In these committees the financial duties of the House of Commons are mainly discharged. The committee of supply controls the public expenditure by considering the grants of money that will be required for the army, navy, and civil services (including revenue departments) during the current year, upon the estimates of that expenditure prepared by the ministers of the Crown. The duty imposed on the committee of ways and means is to consider such portion of the public revenue as is needed to meet the expenditure required for the service of the Crown during the current financial year (see p. 487), and to vote the resolutions that authorise the issue out of the Consolidated Fund of the sums required to meet the grants voted by the committee of supply (see p. 492).<sup>2</sup> Committees of the whole house are also appointed for the consideration of grants made in pursuance of messages from the Crown. Other exceptional demands for expenditure and the imposition of permanent taxation (see p. 489) are considered by similar committees appointed with the royal recommendation.

By a custom nearly as ancient as the institution of the committees of supply and ways and means, these committees were placed among the orders of the day for every Monday, Wednesday, and Friday,<sup>3</sup> and the sitting of the committees was formerly restricted to those days. This restriction is no longer in force. Standing order No. 16 provides that these committees may be set down for any sitting of the house; and shall be appointed for every Monday, Wednesday, and Thursday, the last-mentioned day having been substituted for Friday in 1902 (see p. 198).<sup>4</sup>

In session 1896 the practice was introduced of devoting a day in

Functions of the committee of supply and ways and means and other financial committees.

Days of sitting of committees of supply and ways and means. S. O. 16, Appendix I.

Allocation of days to

<sup>1</sup> 322 H. D. 3 s. 1348; 36 Parl. Deb. 4 s. 360; 142 ib. 140. On one occasion when the government desired to make a statement at the commencement of an evening sitting on re-opening the committee of supply, the Speaker ruled privately that as the rules provided no place for such a motion at an evening sitting, notice of the motion should be given, but that if the motion had been made at one of the ordinary times for setting up money committees (see p. 219), notice would not

have been necessary. See Notices of Motions, sess. 1902, p. 3294.

<sup>2</sup> Matters relative to taxation have been held to be irrelevant to supply, 80 H. C. Deb. 5 s. 536. 552. 647; 84 ib. 1410; while matters relating to expenditure have been ruled out of order in ways and means, 74 ib. 677. 698; 81 ib. 1097. 1105. 1219; 83 ib. 159.

<sup>3</sup> 11 C. J. 98. 501.

<sup>4</sup> 157 C. J. 204.

the business of supply.

S. O. 15, Appendix I.

each week to the business of supply, and of limiting the time to be allotted to that business during the session. This practice, which was carried on with various modifications under sessional orders until 1902, was in that session embodied in a standing order. As soon as the committee of supply has been appointed and the estimates have been presented, the business of supply must be the first order of the day on Thursday unless the house otherwise orders.<sup>1</sup> Not more than twenty days,<sup>2</sup> being days before the 5th of August, are allotted for the consideration of the annual estimates for the army, navy, and civil services, including votes on account, to which additional time, not exceeding three days, before or after the 5th of August, may be allotted by order of the house.<sup>3</sup> The days allotted do not include any day on which the question has to be proposed that the Speaker do leave the chair (see p. 474), or any day on which the business of supply does not stand as first order, or any day occupied by the consideration of estimates supplementary to those of a previous session,<sup>4</sup> or of any vote of credit, or of votes for supplementary or additional estimates presented by the government for war expenditure, or for any new service not included in the ordinary estimates for the year.<sup>5</sup>

Business other than supply on an allotted day.

As has been already stated on p. 231, on an allotted day, after the orders have been entered upon, no business other than the business of supply<sup>6</sup> can be taken before eleven o'clock except a motion for the adjournment of the house under standing order No. 10, or opposed private business, and no business in committee or proceedings on report of supply can be taken after eleven o'clock, unless the house otherwise order on the motion of a minister of the crown, made at the commencement of public business, to be decided without amendment

<sup>1</sup> Although a motion for this purpose is under the standing order not open to debate, the Speaker on 30th July, 1914, allowed a statement to be made on such a motion under the special circumstances, 65 H. C. Deb. 5 s. 1601.

<sup>2</sup> For the purposes of this order two Fridays are deemed equivalent to a single sitting on any other day. In session 1914-16 the number of days was reduced to seventeen, 170 C. J. 196, and in the following session fifteen days, which might be days before or after the 5th August, were allotted, 171 C. J. 161.

<sup>3</sup> The motion for this purpose requires notice, and is to be decided without

amendment or debate. If moved by the government it is set down at the commencement of public business, 157 C. J. 375.

<sup>4</sup> 154 Parl. Deb. 4 s. 398. 642.

<sup>5</sup> Supplementary estimates for new services and excess votes have been allowed by order of the house to be taken on an allotted day, 168 C. J. 310, or after the time for the interruption of business on an allotted day, 158 C. J. 377.

<sup>6</sup> Business of supply includes the reports of the committee of supply as well as the committee itself, 108 Parl. Deb. 4 s. 1004.

or debate. This is the case even if a general order exempting business from interruption under standing order No. 1 is in force.

Of the days so allotted, not more than one day in committee is allotted to any vote on account and not more than one sitting to the report of that vote. At eleven o'clock on the close of the day on which the committee on that vote is taken, and at the close of the sitting on which the report of that vote is taken,<sup>1</sup> the chairman or the Speaker, as the case may be, must forthwith put every question necessary to dispose of the vote or the report.

Vote on account on an allotted day.

At ten o'clock on the last day but one of the allotted days the chairman is directed to put forthwith every question necessary to dispose of the vote then under consideration, and then to put forthwith the question with respect to each class of the civil service estimates that the total amount of the votes outstanding in that class be granted for the services defined in the class,<sup>2</sup> then in like manner to put severally the questions that the total amounts of the votes outstanding in the estimates for the navy, the army, and the revenue departments be granted for the services defined in those estimates.<sup>3</sup> At ten o'clock on the last (not being earlier than the twentieth of the allotted days) the Speaker is directed to put forthwith every question necessary to dispose of the report of the resolution then under consideration, and then to put forthwith with respect to each class of the civil service estimates, the question, that the house doth agree with the committee in all the outstanding resolutions reported in respect of that class, and then to put a like question with respect to all the resolutions outstanding in the estimates for the navy, the army, the revenue departments, and other outstanding resolutions severally.<sup>4</sup>

Procedure for concluding business of supply.

<sup>1</sup> If the report of a vote on account is taken on a Friday, the Speaker puts any questions necessary to dispose of it at five o'clock, 165 C. J. 56. In view of the changes in the hours of sitting made in 1906 (see p. 198, n.), the words "day" and "sitting" in this standing order are now synonymous, 171 Parl. Deb. 4 s. 256.

<sup>2</sup> The chairman in putting these questions states the total amount remaining to be voted for each class, but not the individual amounts and services, 99 Parl. Deb. 4 s. 139.

<sup>3</sup> A motion is usually made at the commencement of public business on the last of the days allotted to the committee of supply, to enable other business to be

taken as soon as supply is concluded, 162 C. J. 376.

<sup>4</sup> On the 4th August, 1914, these questions were put by the chairman, pursuant to an order of the house, as soon as the house had resolved itself into committee of supply, and on the following day the corresponding questions on report of supply were put forthwith on the order of the day for receiving the report being read, 169 C. J. 412. 417. 418. On the 10th and 15th August, 1916, the last two allotted days, these questions were rendered unnecessary as the business both in committee and on report of supply was completed before 10 o'clock.

Dilatory motions on days for concluding supply.

On the days appointed for concluding the business of supply, its consideration may not be anticipated by a motion of adjournment, and no dilatory motion may be moved on proceedings for that business and the business may not be interrupted under any standing order. A count of the house has been refused on such a day in view of this provision.<sup>1</sup>

Consideration of estimates for new services.

The standing order also provides that any additional estimate for any new matter not included in the original estimates for the year, shall be submitted for consideration in the committee of supply<sup>2</sup> on some day not later than two days before the committee is closed.

Instructions to committee of supply.

An instruction to the committee of supply cannot be moved, as, following the Speaker's ruling, "nothing can be brought on in that committee of which notice has not been given in detail, by the estimates laid before the house."<sup>3</sup>

Procedure on the Speaker's leaving the chair.

The ancient constitutional doctrine, that redress of grievances should be considered before the grant of supply, is maintained by the provision in standing order No. 51, that the question that the Speaker do leave the chair must be proposed, whenever it is intended that the house should resolve itself into the committee of supply; but the operation of this standing order is considerably restricted by standing order No. 17, which provides that whenever the committee of supply is to be taken the Speaker shall leave the chair without putting any question, unless on first going into supply on the army, navy, or civil service estimates respectively, or on any vote of credit,<sup>4</sup> an amendment be moved, or question raised, relating to the estimates proposed to be taken in supply.<sup>5</sup> He therefore quits the chair without question put when notice has been given for the consideration of estimates for supplementary or excess grants or of a vote on account or of votes included in a branch of the estimates for the current year in respect

S. O. 17, 51, Appendix I.

<sup>1</sup> 64 Parl. Deb. 4 s. 567; 8 H. C. Deb. 5 s. 1637.

<sup>2</sup> That is to say, the estimate must be upon the notice paper as an effective supply vote on a day not later than two days before the committee closes, 99 Parl. Deb. 4 s. 159. 363.

<sup>3</sup> Mirror of Parliament, 1828, p. 1972.

<sup>4</sup> When notice has been given of a vote of credit and neither an amendment has been proposed to be moved nor a question relating to the vote to be raised, the Speaker has left the chair without putting any question, 169 C. J. 426; 171 ib. 206. 247.

<sup>5</sup> The motion for the Speaker's leaving the chair has been allowed to be made, although the estimates had not been circulated, on the understanding that the motion would be withdrawn or negatived, so that members would not be precluded from moving amendments under standing order No. 51 when the estimates were in their hands, 68 Parl. Deb. 4 s. 305. When an estimate had not been presented, the motion for the Speaker's leaving the chair could not be made, although the estimate having been circulated in error, was in the hands of members, 75 H. C. Deb. 5 s. 1191.

of which the question for his leaving the chair has been already agreed to.<sup>1</sup>

In the debate on amendments to the question for the Speaker's leaving the chair, relevancy to the class of estimates of which notice has been given is strictly enforced. For instance, such matters as the desirability of an appeal in criminal cases, or the conduct of the Lord-Lieutenant of Ireland, were held to be subjects which could not be debated on the civil service estimates, because, in the first case, the amendment did not refer to any present action on the part of the government, and because, in the second, the lord-lieutenant's salary was not granted by the committee of supply,<sup>2</sup> and, for an analogous cause, the subject of the Greenwich Hospital funds (see p. 504) was excluded from debate upon the navy estimates.<sup>3</sup>

Relevancy of amendments on going into committee.

The ordinary rules of debate (see p. 277) are applicable on this occasion. For instance, a matter which should be considered upon a substantive motion (see p. 248), or which has been already decided by the house, or of which notice has been given, or which stands upon the notice paper<sup>4</sup> cannot be discussed. A subject, or matter of detail, which should be discussed in the committee, is out of order. Accordingly, neither debate nor amendment can be permitted relating to grants already agreed to,<sup>5</sup> or to resolutions which will be proposed in the committee of supply, or to items upon the estimates.<sup>6</sup> As in committee of supply matters involving legislation cannot be discussed on the question for the Speaker's leaving the chair.<sup>7</sup>

Debate thereon.

Under established usage, members who desire to bring forward amendments of which they have given notice,<sup>8</sup> do not wait for the

Order in moving amendments.

<sup>1</sup> 276 H. D. 3 s. 1261; 277 ib. 220; 285 ib. 549; 293 ib. 1598; 295 ib. 893. In a new parliament the Speaker leaves the chair without putting any question for committee of supply on estimates supplementary to those voted in the last parliament, 88 Parl. Deb. 4 s. 213. The Speaker adopted the same course when it was necessary to reopen the committee of supply in session 1902, 114 Parl. Deb. 4 s. 211.

<sup>2</sup> 296 H. D. 3 s. 1010; 308 ib. 1756. 1774-1779. 1785-1789.

<sup>3</sup> 342 H. D. 3 s. 1027.

<sup>4</sup> 142 H. D. 3 s. 1026; 189 ib. 91; 207 ib. 500; 308 ib. 1755.

<sup>5</sup> 2nd June, 1856 (Mr. Blackburn), not reported; 164 H. D. 3 s. 1500.

<sup>6</sup> 165 H. D. 3 s. 639; 173 ib. 903; 189

ib. 857; 209 ib. 1327.

<sup>7</sup> 171 Parl. Deb. 4 s. 1372.

<sup>8</sup> The precedence of such notices upon the paper is determined by a ballot held on the next sitting day after the committee of supply has been set up in the same manner as the ballot for notices of motions (see p. 215). As the minister in charge of the estimates can make his statement with regard to them either on the motion for the Speaker's leaving the chair, or in committee of supply on the first vote submitted to the committee (see p. 483), the Speaker, when a minister desired to adopt the former course, has declined to accept a motion to give the member who had the first amendment on the paper precedence over him, 142 Parl. Deb. 4 s. 433.



Speaker's call, but rise to do so when the opportunity occurs.<sup>1</sup> Accordingly, when several notices have been given of amendments on going into the committee of supply, though the Speaker endeavours to follow the order taken by the notices of amendments upon the notice paper, that order cannot be observed, unless the members themselves rise in due course and claim their opportunity. As notice is required of these amendments,<sup>2</sup> they can only be moved by the member who gave the notice<sup>3</sup> (see p. 258). In this and in other respects order in debate on going into committee of supply conforms to ordinary practice. When an amendment to the question for the Speaker's leaving the chair has been negatived, as it has been decided that the words proposed to be left out shall stand part of the question no further amendment can be moved thereto; though general debate on the main question can be maintained by those members who have not exhausted their right to speak to that question<sup>4</sup> (see p. 285). After an amendment has been proposed, the debate is confined to the question raised by it until the amendment has been disposed of.<sup>5</sup>

Effect of  
S. O. 17  
when de-  
bate on an  
amend-  
ment is ad-  
journd.

The adjournment of the debate on an amendment proposed to the question for the Speaker's leaving the chair may create an exceptional result, owing to the direction contained in standing order No. 17, that except on first going into committee of supply on the annual estimates or on a vote of credit, the Speaker shall leave the chair without putting any question. If an adjourned debate on that question is standing upon the notice paper when supply, for the consideration of which in committee it is not necessary to propose the question for the Speaker's leaving the chair, is to be taken, the order of the day for resuming the adjourned debate is removed, and procedure on the amendment lapses, in order that the Speaker, in obedience to the standing order, may leave the chair without question put.<sup>6</sup>

Revival of  
the order  
for the  
committee  
of supply.

The committee of supply must be kept on foot throughout the session, until closed in due course (see p. 486). Accordingly, when the house,

<sup>1</sup> 174 H. D. 3 s. 1960.

<sup>2</sup> 191 H. D. 3 s. 2053; 314 ib. 1718.

<sup>3</sup> 9 Parl. Deb. 4 s. 1663.

<sup>4</sup> A subject which has been discussed on the amendment cannot be raised again on the main question, 161 Parl. Deb. 4 s. 619.

<sup>5</sup> 54 Parl. Deb. 4 s. 1290; 142 ib. 462.

<sup>6</sup> 27th and 30th May, 1892, 147 C. J. 297. 300. See also supply procedure, 9th, 10th, and 11th March, 1893, 148 C. J. 115. 119. 122. Notices of Motions, sess.

1893-4, pp. 645. 677. 709. The order for the adjourned debate was removed on Friday, 10th March, and when the question was repropounded (11th March) for the Speaker's leaving the chair for the committee of supply (Army Estimates), it was held (private ruling) that, as on the 9th March the house decided against an amendment to that question, no amendment could be proposed thereto on the 11th March, but general debate was maintained on the main question.



by the acceptance of an amendment to the question for the Speaker's leaving the chair, has thereby superseded the order of the day for the committee of supply, that order is revived by a motion, made forthwith, either that the house will immediately,<sup>1</sup> or upon a future day,<sup>2</sup> resolve itself into the committee of supply.<sup>3</sup> This course has also been followed on those occasions when, the motion for the Speaker's leaving the chair having been negatived, the house could not agree upon an amendment that should follow thereon. For instance, four successive amendments having been tendered in vain for the acceptance of the house, an addition to the initial word "That" was accepted (see p. 260), whereby the sitting of the committee of supply was postponed to a future day; <sup>4</sup> and, on another occasion, by words so added, the house immediately resolved itself into committee of supply.<sup>5</sup> Except on occasions when, under standing order No. 17, the Speaker leaves the chair forthwith, the resolution for the immediate resumption of the committee of supply compels the re-proposal of the question for the Speaker's leaving the chair; and a division has been taken against that question,<sup>6</sup> and amendments moved thereto.<sup>7</sup>

When the order of the day for the committee of supply becomes a dropped order by a sudden adjournment of the house, under the practice explained elsewhere (see p. 234), if necessity arises, the house at the next sitting immediately resolves itself into the committee of supply.<sup>8</sup> If the next sitting be a Thursday, a motion for

Resumption of sittings.

<sup>1</sup> 122 C. J. 106; 126 ib. 176, 206 H. D. 3 s. 323; 132 C. J. 104; 136 ib. 219. 288; 138 ib. 63; 148 ib. 106.

<sup>2</sup> 134 C. J. 94. 136. 177; 138 ib. 168; 143 ib. 200; 145 ib. 284.

<sup>3</sup> The motion that the house would, on Monday next, resolve itself into the committee of supply was made, 27th May, 1892, immediately after the debate on an amendment to the question for the Speaker's leaving the chair for committee of supply had been adjourned by the midnight interruption of business (see p. 199), 147 C. J. 297.

<sup>4</sup> 120 C. J. 379, 180 H. D. 3 s. 369-427.

<sup>5</sup> 126 C. J. 416.

<sup>6</sup> 115 C. J. 267.

<sup>7</sup> 105 C. J. 198; 111 ib. 124; 113 ib. 306; 115 ib. 454; 122 ib. 106. 219; 133 ib. 266; 174 H. D. 3 s. 1960; 205 ib. 1515; 206 ib. 322. In order to meet the requirements of the public service, the house has exercised much freedom of

action in dealing with the committee of supply, and the resumption of the committee has been obtained, immediately after business has been transacted therein, upon the report to the house of the resolutions of the committee. Thus on one occasion, the house went into committee, three resolutions were passed, and on the report of the resolutions, a motion was made forthwith that the sitting of the committee should be resumed, 134 C. J. 301, 247 H. D. 3 s. 888. 1046. A like motion has been made at a nine o'clock sitting when pursuant to a standing order, since repealed, the chairman made his report to the house, 142 C. J. 373 (see p. 198, n. 1).

<sup>8</sup> Resolutions which have been come to at such a sitting before its interruption are reported by the chairman at the conclusion of the next sitting of the committee, 132 C. J. 313. 321; 162 ib. 201, 174 Parl. Deb. 4 s. 1106.

the revival of the committee of supply has been held to be unnecessary in view of the provision of standing order No. 15 (1).<sup>1</sup>

Notice of estimates to be considered.

When the transaction of business is desired, notice of the class of estimates and of the particular votes therein intended to be submitted to the committee is affixed to the order of the day. The notice of an estimate has been waived by the house, on the 11th June, 1886, under urgent circumstances; and, similarly it has been held that estimates could be considered, public notice in the house having been given of an intention to take them, although notice to that effect had been accidentally omitted from the notice paper circulated among the members of the house.<sup>2</sup>

Form of supply resolutions.

Each grant is placed before the committee of supply by a motion, which states the amount to be granted,<sup>3</sup> and the particular service for which the sum is demanded. The form the motion takes is, "That a sum, not exceeding £, be granted to his Majesty,<sup>4</sup> to defray the charge which will come in course of payment during the year ending on the 31st day of March, 19—, for" the object therein specified.

Procedure on supply grants.

Motions for a grant may be submitted to the committee in the order selected by the mover without regard to the order and arrangement of the estimates,<sup>5</sup> or to any motion which was before the committee at a previous sitting and was not disposed of (see p. 413). The grants for future expenditure arising in an ensuing financial year can be voted before a supplementary grant to make good past expenditure which had arisen in the then current financial year.<sup>6</sup>

<sup>1</sup> 174 Parl. Deb. 4 s. 1166.

<sup>2</sup> 337 H. D. 3 s. 425; 68 Parl. Deb. 4 s. 449; see also 39 ib. 283.

<sup>3</sup> The amount to be granted is the total sum required for the service less any appropriations-in-aid. Any sums directed by statute or by the Treasury to be applied as appropriations-in-aid of money provided by parliament for any purpose is deemed to be money provided by parliament for that purpose, Public Accounts and Charges Act, 1891, section 2 (2). These sums cannot be reduced in committee of supply, 82 Parl. Deb. 4 s. 20, nor can the policy of such appropriations-in-aid, or the services on which savings have been made, if they are due to savings, be discussed, 183 ib. 1455; 189 ib. 1354; 22 H. C. Deb. 5 s. 2612; 59 ib. 329. In some cases only token sums are taken, e.g. Army Estimates, 1915-16, Army (Ordnance Factories)

Estimates, 1907-8, and Army (Excesses), 1900-1 (see p. 453).

<sup>4</sup> Where a sum has already been taken on account, the total amount stated in the estimate is correspondingly reduced and the sum granted is recited as being "to complete the sum necessary to defray the charge," and when a supplementary estimate has been presented before the original estimate has been voted, the amount of the supplementary estimate is added to the portion remaining of the original estimate, and the motion runs: "That a sum not exceeding £ (including a supplementary sum of £) be granted. . ."

<sup>5</sup> 215 H. D. 3 s. 1014.

<sup>6</sup> Navy Grants: (1) men, (2) wages, (3) supplementary, 142 C. J. 121; 146 ib. 125. 131. Army: (1) men, (2) pay, (3) supplementary, 145 ib. 187. 192.

The committee can consider also at the same sitting both a vote on account and the vote itself for which the grant on account has been made.<sup>1</sup>

A grant may be submitted to the decision of the committee, at the discretion of the mover, by a proposal of the items of which a grant is composed, in separate resolutions. For instance, an estimate for the purchase of land at South Kensington comprised three items. The first item was moved as a separate grant, which was agreed to ; and the two other items, taken together, were proposed as another grant, which was negatived,—a course which was pursued with the express sanction of the chair.<sup>2</sup> This course was also taken, during the session of 1890, regarding the grants for the household of the Lord Lieutenant of Ireland, and for the offices of his chief secretary, which were, in the first instance, proposed in a single resolution.<sup>3</sup>

The motion by which a grant on account is proposed follows the customary form. The motion states the total sum required ; and the various amounts needed for each department, which compose that sum, are stated in a schedule appended to the resolution. The question proposed thereon from the chair follows the terms of the resolution, and places the total sum, the aggregate grant, before the committee for its decision ; and upon that question amendments can be moved for the reduction of the whole grant,<sup>4</sup> or for the reduction or omission of the items whereof the grant is composed.<sup>5</sup>

The proposal of a motion for a grant of supply must be made by a minister of the Crown ; though an exception was formerly made in the case of the grant for the British Museum, which might be moved by a member who, as a trustee of the museum, was responsible for the administration of the grant ; a petition for aid from the trustees having been presented to the House, under the recommendation of the Crown, and referred to the committee of supply.<sup>6</sup>

Except in the manner of proposing the question upon an amendment (see p. 481), the procedure of the committee of supply follows the ordinary usage of a committee of the whole house. No amendment can be moved which is not relevant to the grant under consideration ; nor can a motion for postponing a proposed resolution be entertained. Each resolution for a grant forms a distinct motion, which can only be dealt with by being agreed to, reduced, negatived,

<sup>1</sup> 118 C. J. 140 ; 132 ib. 138.

<sup>2</sup> 171 H. D. 3 s. 937.

<sup>3</sup> 145 C. J. 466.

<sup>4</sup> 132 C. J. 139.

<sup>5</sup> 178 H. D. 3 s. 740.

<sup>6</sup> The last occasion was the 16th August, 1883, 283 H. D. 3 s. 877.

Items  
voted  
separ-  
ately.

Procedure  
on a grant  
on ac-  
count.

Grants  
proposed  
by a  
minister.

Procedure  
in com-  
mittee.

superseded, or, by leave, withdrawn ;<sup>1</sup> and the withdrawal can be made, although the decision of the committee has been taken upon amendments proposed to the resolution. Here the power of the committee ceases. The committee may vote or refuse a grant, or may reduce the amount thereof, either by a reduction of the whole grant, or by the omission or reduction of the items of expenditure of which the grant is composed : but the committee have no other function.

No increase of sums specified by the estimates.

The constitutional principle which vests in the Crown the sole responsibility over national expenditure (see p. 456), and which forbids the Commons to increase the sums demanded by the Crown for the service of the state (see p. 461), is strictly enforced in the committee of supply. For instance, it was held, 9th March, 1863, that a member could not move an addition to the number of men stated upon the army estimates, although apparently the grant for pay upon the estimates provided for a number of soldiers larger than the number therein specified ; and analogous motions have been ruled out of order, although the proposed increase in the number of men was nominal, designed only for the correction of an alleged error in the estimates.<sup>2</sup> No amendment can, therefore, be proposed, whether by a minister of the Crown, or by any other member, to increase the amount of a grant beyond the sum specified in the estimate. If such increase be necessary, the original estimate must be withdrawn, and a revised estimate presented, specifying the number of men required, or the sum to be demanded, or additional estimates must be presented.<sup>3</sup>

No alteration of destination.

The committee of supply cannot attach a condition or an expression of opinion to a grant or alter its destination.<sup>4</sup> This rule came under consideration when a grant for the packet service was proposed,

<sup>1</sup> 175 H. D. 3 s. 77.

<sup>2</sup> 169 H. D. 3 s. 1267 ; see also Pay of General Officers, 21 ib. 1377 ; General Officers of Marines, 173 ib. 1282.

<sup>3</sup> In 1858, the new ministry having proposed reductions in the army and navy estimates prepared by their predecessors, a question arose whether, in committee of supply, the votes proposed by them might not be increased to the amount of the original estimates. To obviate these doubts, revised army estimates were prepared, and the order for referring the original army estimates to the committee was discharged (113 C. J. 112. 120) : but

as regards the navy estimates, no such precaution was taken.

<sup>4</sup> 71 H. D. 2 s. 294. Though undoubtedly out of order, amendments of this nature have been moved, but the proceeding has been either withdrawn, or subsequently negatived, such as the amendment of a building grant for the University of London, by a proviso, "That no part of such sum shall be applied to the erection of any building according to either of the designs now exhibited," which was omitted on report, 122 C. J. 266. 270 ; see also 130 ib. 324.

accompanied by a proviso prescribing that no part of the grant was applicable to certain payments for the conveyance of mails subsequent to the 20th June, 1863. An objection was taken to the proviso as an infraction of this rule : but as the proviso was strictly relevant to the grant for the packet service, and merely defined the purposes for which the grant was designed, the objection was not sustained by the chairman, and the regularity of the proviso was subsequently confirmed by the action of the house.<sup>1</sup> On a subsequent occasion this precedent was followed ; and an amendment to the words defining the destination of a grant was permitted, as the intention of the amendment was to define the purpose for which the vote was designed, and to render the resolution consistent both with the object to which the grant was destined, and with the description thereof in the estimate.<sup>2</sup>

The method which regulates the proposal of amendments in the committee of supply is not in accord with the habitual practice of the house. In the contest which must, during a debate, inevitably arise between a motion and an amendment proposing an alteration of the terms of the motion, undue priority is given to the second proposal, namely, to the amendment, if it be submitted for decision as a substantive proposal taking the place of, and as a substitute for the original motion. Yet a due position in debate must be secured for the amendment. The house, according to its ordinary mode of procedure, meets this difficulty by a method which secures equality of treatment between the motion and the amendment. Both proposals are simultaneously submitted to consideration. The house is not asked whether it approves of the amendment, or of the motion, but whether the motion shall be altered, so as to make way for the reception of the amendment (see p. 259).

Mode of  
proposing  
amend-  
ments in  
committee  
of supply.

This method of putting the question on an amendment is disregarded in the committee of supply. When an amendment is proposed for the reduction of a grant, the motion originally proposed is wholly set aside, and can be withheld indefinitely from the decision of the committee ; for the amendment, as proposed from the chair, takes the same form as the original motion, but offers, in lieu of the sum thereby demanded, a reduced sum for acceptance by the committee.<sup>3</sup> The amendment thus takes the place of the original

Amend-  
ments of a  
grant.

<sup>1</sup> 118 C. J. 231. 239, 170 H. D. 3 s. 1882.  
2024.

<sup>2</sup> 115 C. J. 191 ; 117 ib. 190 ; 143 ib.  
492. 504, &c.

<sup>3</sup> 141 C. J. 180, 305 H. D. 3 s. 166.

motion ; and consequently, the rejection of the amendment does not, as would happen under the habitual usage of the house, bring the original motion under the decision of the committee, but leaves room for the proposal, without limit, of amendments in the same form, and of ever-varying amount.

Amend-  
ments of  
items of a  
grant.

The form of amendment hitherto considered is to obtain a reduction of the total grant proposed from the chair. Following the like method of procedure, a motion for a grant can be dealt with, in detail, by proposals to omit or to reduce the items of expenditure which compose the grant, in the manner prescribed by the following rules, which were, on the 9th February, 1858, and the 28th April, 1868, adopted by the house :—

“ That when a motion is made, in committee of supply, to omit or reduce any item of a vote, a question shall be proposed from the chair for omitting or reducing such item accordingly ; and members shall speak to such question only, until it has been disposed of.”

“ That when several motions are offered, they shall be taken in the order in which the items to which they relate appear in the printed estimates.”

“ That after a question has been proposed from the chair for omitting or reducing any item, no motion shall be made, or debate allowed upon any preceding item.”

“ That when it has been proposed to omit or reduce items in a vote, the question shall be afterwards put upon the original vote, or upon the reduced vote, as the case may be.”

“ That after a question has been proposed from the chair for a reduction of the whole vote, no motion shall be made for omitting or reducing any item.”<sup>1</sup>

Procedure  
on amend-  
ments.

Under these rules, the question upon the whole grant is first proposed from the chair ; and if a motion be made to omit or reduce any item comprised in that grant, a question is put, that such item be omitted therefrom, or be reduced by a specified sum ;<sup>2</sup> and when a reduction has been made in the amount of an item, a further motion may be made to omit the reduced item.<sup>3</sup> In dealing with the items of an estimate, it has been ruled that items must be dealt with separately,<sup>4</sup> and that an amendment including more than one item cannot be proposed by way of reduction of an item, but must be moved as a reduction of the whole grant.<sup>5</sup> The rule which prohibits any return

<sup>1</sup> 113 C. J. 42 ; 123 ib. 145. For debates on the committee practice prior to the adoption of these rules, see 145 H. D. 3 s. 1729. 2047 ; 146 ib. 58–68.

<sup>2</sup> 132 C. J. 138 ; 134 ib. 97. 396 ; 137 ib. 83 ; 139 ib. 404 ; 144 ib. 426. 431. 435.

<sup>3</sup> 119 C. J. 211.

<sup>4</sup> 177 H. D. 3 s. 1990.

<sup>5</sup> On a proposal to move the omission of three items the chairman submitted for the decision of the committee the question upon the first item, 330 H. D. 3 s. 497.

in debate to an item prior to the item upon which debate has arisen,<sup>1</sup> or a question has been proposed, remains in force, after the withdrawal of the motion on which that question was founded; <sup>2</sup> nor can a proposal be made for the reduction of the whole grant, for the purpose of renewing discussion upon an item on which a question has been proposed, or debate arisen, or upon any item previous thereto.<sup>3</sup> The reduction of a grant or item must be of a substantial, and not of a trifling amount; <sup>4</sup> nor may a series of motions be made upon the same grant, raising, substantially, the same issue.<sup>5</sup>

When two or more amendments upon the same grant are, at the same time, tendered to the committee, the chairman puts first the amendment which proposes the largest reduction, and then, if that be not accepted, the lesser amendments; <sup>6</sup> still, as reductions are moved upon a grant independently the one of the other, a succession of reductions may be moved alternating between larger or smaller amounts, as may seem expedient to the movers, subject to the authority of the chairman, who may intervene to determine the most convenient order in taking the amendments offered.<sup>7</sup>

In accordance with general usage, the main principle which governs debate in the committee of supply is relevancy to the matter which the question proposed from the chair submits to the committee. To this rule a necessary exception is made. The expenditure on the army services, though spread over various sources of outlay, is expenditure devoted to one object. By established usage, therefore, if the minister in charge of the army estimates has not made his general statement concerning the services for the year upon the question "That Mr. Speaker do now leave the chair" for the committee, he makes it upon the first vote that is proposed to the committee, namely, the vote which determines the number of the land forces to be maintained, or the vote for pay, and a general discussion

Greater  
and lesser  
sums.

Relevancy  
in debate.  
Army and  
navy  
services.

<sup>1</sup> Chairman's ruling, private, 13th November, 1888; 80 H. C. Deb. 5 s. 1277. 1315; 81 ib. 942.

<sup>2</sup> 36 Parl. Deb. 4 s. 1078; 58 H. C. Deb. 5 s. 1838.

<sup>3</sup> 287 H. D. 3 s. 235; 319 ib. 1484. 1485.

<sup>4</sup> The chairman has declined to put the question on a reduction of 5*l.*, 246 H. D. 3 s. 1439. See also 240 ib. 1456; 9 Parl. Deb. 4 s. 1293; 80 H. C. Deb. 5 s. 1297.

<sup>5</sup> 236 H. D. 3 s. 592.

<sup>6</sup> 145 H. D. 3 s. 1733; 248 ib. 911. For a similar ruling on report, see 2 H. C. Deb. 5 s. 1649. This, and the practice mentioned on p. 412, are the only instances in which the spirit of the ancient rule, now practically obsolete, regarding charges upon the people, which prescribed the order in which the question upon greater and lesser sums should be put from the chair, affects the procedure of the committee.

<sup>7</sup> 103 C. J. 405. 924; 111 ib. 101. 106. 124; 124 ib. 283.



upon the army services is taken thereon. A similar practice obtains in the case of the navy services. This power of general debate does not, however, sanction discussion in detail upon special subjects, which must be reserved until the grant for that special service is before the committee, such as the reorganization of the controlling authorities over navy expenditure, or the tactics adopted during naval manœuvres or an admiralty minute dealing with a court martial.<sup>1</sup> After the pay, or wages, vote has been agreed to, debate must be confined to the particular vote before the committee;<sup>2</sup> but if, in consideration of the pressing needs of the services, the number of men, and the grants for pay of the navy or army services are voted without full discussion, general debate has been permitted, in respect of the navy, upon the grant for victuals and clothing, and, in respect of the army, on the grants for provisions or clothing.<sup>3</sup> The sanction of the chairman for any such departure from the ordinary rules of debate must be obtained while the vote, upon which the general discussion is in order, is under consideration.<sup>4</sup>

Civil  
services.

No method has been established for obtaining in the committee a general discussion upon the administration of the expenditure sanctioned by the civil service estimates; and debate must be kept to the specific object of the grant which is placed before the committee.<sup>5</sup> For instance, the grant for the salary of the Chief Secretary for Ireland does not justify a review of his conduct regarding prosecutions, —a subject which is relevant to the grant for public prosecutions.<sup>6</sup> Criticism made on the grant for prisons upon the enforcement by the officials of the prison rules, was permitted, but not of the conditions imposed by those rules from a legislative point of view; nor can the circumstances attending the trial, which resulted in sending a prisoner to gaol, be discussed on the prisons vote.<sup>7</sup>

Supple-  
mentary

Debate on supplementary and excess grants is restricted to the

<sup>1</sup> 303 H. D. 3 s. 1215; 333 ib. 1731; 142 ib. 1322; 154 ib. 102.  
9 Parl. Deb. 4 s. 1278.

<sup>2</sup> 223 H. D. 3 s. 655; 63 Parl. Deb. 4 s. 355. 370.

<sup>3</sup> 267 H. D. 3 s. 851; 350 ib. 2039. In session 1912-13 as vote A of the Army Estimates and certain other votes were granted before the close of the financial year without full discussion, a general discussion was allowed on vote 1 (Pay) which was brought on in the month of June, 53 H. C. Deb. 5 s. 1058.

<sup>4</sup> 74 Parl. Deb. 4 s. 1003; 91 ib. 1026;

<sup>5</sup> An attempt was made, without success, 12th June, 1857, 145 H. D. 3 s. 1712. In 1877, a statement regarding the civil services was made by Mr. W. H. Smith on the motion for going into supply, 233 ib. 651; but a similar attempt regarding the education vote during that session, by the vice-president of the committee of council, failed to obtain approval, 235 ib. 1048.

<sup>6</sup> 331 H. D. 3 s. 859; 339 ib. 1827.

<sup>7</sup> 356 H. D. 3 s. 447. 475.



particulars contained in the estimates on which those grants are sought, and to the application of the items which compose those grants; and the debate cannot touch the policy or the expenditure sanctioned, on other heads, by the estimate on which the original grant was obtained, except so far as such policy or expenditure is brought before the committee by the items contained in the supplementary or excess estimates.<sup>1</sup>

Matters which can be discussed upon the grant on which an advance is sought, may be discussed, in anticipation, upon the motion for the grant on account; though the proper occasion to examine the grants in detail is when the final grant to complete is proposed to the committee. If, as occasionally takes place, the whole amount required for a particular service (as, by way of example, for a special diplomatic mission which had been brought to a conclusion), has been obtained

Debate on  
a vote on  
account.

<sup>1</sup> 302 H. D. 3 s. 794; 311 ib. 1418. 1424; report, select committee on estimates (procedure), Parl. Pap. (H. C.), sess. 1888, No. 281, p. v., questions 2. 164. 446. 705; debate on grant for diplomatic buildings (Egypt), 2nd March, 1893, and the Speaker's statement, 3rd March, in answer to a question put to him by the chancellor of the exchequer, regarding debate on supplementary estimates: "I have always, since being in the chair, manifested great reluctance to answer any question which might seem to be in the nature of an appeal from the chairman of committees to myself: but the way in which the right hon. gentleman has put his question clearly indicates to me that he does not wish to refer to me as a court of appeal. . . . Undoubtedly, of late years a certain limitation has been enforced upon the discussion of supplementary estimates. As a general rule, on the supplementary estimates it is in order to discuss only the particular items which constitute the supplementary estimates, and the sub-heads of the original estimates can only be referred to so far as they are involved in the fair discussion of the points contained in the items asked for in the supplementary estimates. Of course, it is quite obvious that it would be improper, as a general rule, to raise on a supplementary estimate the whole question of policy involved in the original estimate; and, as I have stated, the dis-

cussion is properly confined to the items of the supplementary estimate. I think, however, that I ought to state that items of supplementary estimates may raise in themselves questions of policy, but the interpretation whether they do raise questions of policy, or not, must clearly be left to the chairman of committees. If I may be allowed to illustrate what I mean, I would say the question of the draining of Constantinople would clearly not raise the whole question of foreign embassies. But, on the other hand, a vote which would largely increase the vote for a railway to Uganda might raise the whole question of the policy involved in the original vote for Uganda. I do not know that I need say anything else, but that I entirely sever myself from anything that occurred last night. The question has been asked me; and it is quite true that restriction has been placed upon the discussion of items in supplementary estimates; and the question whether principles are involved, either new principles, or principles which were originally involved in the original estimates, must be one entirely at the discretion of the gentleman who occupies, and worthily occupies, the chair," 9 Parl. Deb. 4 s. 910. 911. 975. See also 9 Parl. Deb. 4 s. 1875; 31 ib. 429. 651. 1436; 38 ib. 800; 90 ib. 247; 130 ib. 596. 778. 1039; 152 ib. 1065; 170 ib. 1466; 184 ib. 1078; 14 H. C. Deb. 5 s. 919; 22 ib. 713. 2612; 58 ib. 2015; 59 ib. 107. 280.

on a grant on account, the committee is not thereby debarred from debate on the subject of that mission, when the final grant for missions abroad is being considered, although, as no money is included for that mission in the grant then before the committee, no reduction thereon can be proposed.<sup>1</sup>

General  
method of  
debate in  
committee  
of supply.

Regarding the general conduct of debate in the committee of supply, it may be observed that remarks on the conduct of a servant of the state, made on the grant containing his salary, must be restricted to his official conduct.<sup>2</sup> The committee of supply does not afford the proper opportunity for discussing from which house of parliament a minister should be chosen,<sup>3</sup> or whether he should be in the cabinet or not.<sup>4</sup> The administrative action of a department is open to debate, but the necessity for legislation and matters involving legislation cannot be discussed in committee of supply.<sup>5</sup> Nor can a member discuss a grant on which the committee have resolved, or a grant not yet brought forward. So also when a proposal has been made to omit or reduce an item, debate is restricted to that item, and reference is not permitted to any other item in the grant.<sup>6</sup> Reply in committee to statements made in the house upon the estimates is not permitted. On the 16th April, 1860, a general discussion on the navy services arose before the Speaker left the chair, and the secretary to the Admiralty reserved his explanations until the house was in committee: but when he was proceeding to refer to matters not comprised in the vote under consideration, he was stopped, being out of order.<sup>7</sup> On the 13th March, 1900, a member was not allowed to discuss in committee on the army estimates the general statement that the under secretary of state for war had made before the Speaker left the chair.<sup>8</sup>

Close of  
the finan-  
cial pro-  
ceedings  
of the  
session.

When all the supplies for the service of the year have been granted, the sittings of the committee of supply are discontinued. Care must be taken not to close the committee until all the necessary grants have been obtained. If the committee of supply be designedly closed,

<sup>1</sup> Chairman's private ruling, Sir H. D. Wolff's mission, sess. 1887.

<sup>2</sup> 329 H. D. 3 s. 1431-1434; 341 ib. 1213.

<sup>3</sup> 36 Parl. Deb. 4 s. 925. 1304; 39 ib. 657; 156 ib. 50.

<sup>4</sup> 43 Parl. Deb. 4 s. 44.

<sup>5</sup> 28 Parl. Deb. 4 s. 1523; 36 ib. 1209; 39 ib. 1663-7; 41 ib. 563; 49 ib. 64; 98 ib. 1311. 1318; 108 ib. 687; 121 ib. 161;

139 ib. 1598; 150 ib. 1359; 153 ib. 134; 171 ib. 100; 177 ib. 153. 159. 195; 41 H. C. Deb. 5 s. 1722; 63 ib. 1336. 1356. For a ruling to the same effect on the report of supply see 64 Parl. Deb. 4 s. 672. 682.

<sup>6</sup> 175 H. D. 3 s. 1673; 177 ib. 1990.

<sup>7</sup> 157 H. D. 3 s. 1851.

<sup>8</sup> 80 Parl. Deb. 4 s. 782-3.

it cannot be reopened save by the demand from the Crown for further supplies made by a second speech from the throne,<sup>1</sup> or a royal message,<sup>2</sup> or by the communication of additional estimates.<sup>3</sup> When the committee of supply is closed, the financial arrangements of the year are completed by votes in the committee of ways and means (see p. 492); and upon the final resolution of that committee when agreed to by the house the appropriation bill is ordered in (see p. 499).

The consideration of the financial statement for the year made by the chancellor of the exchequer,<sup>4</sup> is an important feature in the financial legislation of each session. This statement, familiarly known as "the budget," is made when the minister has completed his estimate of the probable income and expenditure for the financial year, and usually after some progress has been made in voting the grants for the army and navy and other public services.<sup>5</sup> In this statement the chancellor of the exchequer develops his views of the resources of the country, communicates his calculations of probable income and expenditure, and declares whether the burthens upon the people are to be increased or diminished. As the consideration of the taxes for the service of the year is the province of the committee of ways and means, his statement is generally addressed to that committee.<sup>6</sup> The resolutions which form the usual basis of the chancellor's statement are the resolutions for the continuance, during the financial year, of the customs duty upon tea, and of the income tax duty, as these duties are the only

Committee of ways and means.  
Taxation.

<sup>1</sup> 6th March, 1706, 15 C. J. 326. 329; 20th July, 1715, 18 ib. 232. 234.

<sup>2</sup> 16th June, 1721, 19 C. J. 592. 602; 18th April, 1748, 25 ib. 611. 626. 635; 18th November, 1910, 165 ib. 302; 30th January, 1913, 167 ib. 517; 3 Hatsell, 168. The committee of ways and means has been revived, 62 C. J. 803. 806; 164 ib. 418; 169 ib. 418. 444.

<sup>3</sup> 157 C. J. 461. 463, 114 Parl. Deb. 4 s. 108; 169 C. J. 417. 418. 455. 456; 170 C. J. 234. 235.

<sup>4</sup> Or sometimes the first lord of the treasury, if a member of the House of Commons.

<sup>5</sup> In the years 1845, 1848, 1852, and 1857, the budget statement was made in anticipation of the customary votes in committee of supply, 77 H. D. 3 s. 455; 96 ib. 900. 987.

<sup>6</sup> Financial statements have not in-

variably been made in the committee of ways and means. In 1823, the budget was brought forward in the committee on the Exchequer Bills Bill, 9 H. D. 2 s. 1413. On the 3rd December, 1852, and again on the 13th February, 1857, the statement was made in committee of supply, 123 H. D. 3 s. 836; 144 ib. 631. In 1860, it was introduced in a committee on the Customs Acts, 156 ib. 812. On the 29th April, 1915, the chancellor of the exchequer, on the motion for leave to bring in the Defence of the Realm (Amendment) (No. 3) Bill, anticipated part of the budget statement which he made on the 4th May, and certain resolutions necessary for the protection of the revenue were agreed to in committee of ways and means immediately after the introduction of that bill, 170 C. J. 105. 109, 71 H. C. Deb. 5 s. 864. 926. 1000. 1009.

duties<sup>1</sup> not, at present, made permanent by statute;<sup>2</sup> and upon these and any other necessary resolutions, when agreed to by the house, the bill is introduced which gives legislative effect to the financial objects of the government.<sup>3</sup>

Pro-  
visional  
collection  
of taxes.

In the case of resolutions of the committee of ways and means providing for the variation of any existing tax or for the renewal<sup>4</sup> of any tax in force or imposed during the previous financial year with or without modifications and either at the same or a different rate, a declaration may be included in the resolution that it is expedient in the public interest that the resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913, (3 Geo. V. c. 3).<sup>5</sup> The effect of the inclusion of this declaration is to

<sup>1</sup> The statement in the text is retained, but it must be borne in mind that certain duties rendered necessary by war expenditure have been imposed temporarily and temporary additions made to existing duties.

<sup>2</sup> The duty on malt was made perpetual by statute in 1822, on tobacco in 1826, on offices and pensions in 1836, and on sugar in 1846. Presumably in accordance with the established usage that one important branch of the revenue should be voted from year to year, the tea duty is continued annually and has not been made permanent. See Mr. Gladstone's statement, 1863, 170 H. D. 3 s. 228.— (Information supplied by Mr. S. Spring Rice.)

<sup>3</sup> An anticipatory authority is imparted by usage to the resolutions of the committee of ways and means which impose or alter taxation. Under orders from the treasury, although statutory legal effect may not for some time be given to these resolutions, the new reduced or increased duties are collected from the date prescribed by the resolutions, as soon as they are agreed to by the committee, and from the day following that upon which they are agreed to by the committee when no date is specified in the resolution. These proceedings are, at the time, without legal authority; but they are subsequently legalized by the statute under which those altered duties are levied. For statutory recognition of this practice see 39 & 40 Vict. c. 36, s. 18, 57 & 58 Vict. c. 30, s. 38, 1 Edw. VII. c. 7, s. 12 (4), 1 Geo. V. c. 2, s. 14, and in

connection with the application of the practice to the assessment and collection of income tax not yet imposed by statute, see judgment of Mr. Justice Parker in *Bowles v. Bank of England*, [1913] 1 Ch. at p. 83. In 1890, for example, the resolution increasing the duty on spirits was moved and passed by the committee of ways and means on the 17th April, and the increased duty began to be charged on the following day. The reduction of the duty on tea, as from the 1st May, was agreed to by the committee on the 22nd April, and took effect from the day specified in the resolution. The Customs and Inland Revenue Act, 1890, accordingly enacted that the altered duties should be charged and paid on and after the 18th April and 1st May, respectively, 53 Vict. c. 8, ss. 2, 4. Similarly it is the practice of the Treasury to act upon resolutions authorizing an issue of consols or exchequer bonds as soon as they are agreed to in committee, 145 Parl. Deb. 4 s. 842. It is necessary, however, that statutory authority for the issue should be obtained before the first payment of dividend falls due, Fourth Report, Public Accounts Committee, Parl. Pap. (H. C.), sess. 1903, No. 304, p. iv.

<sup>4</sup> Renewal includes re-imposition, 3 Geo. V. c. 3, s. 1 (3).

<sup>5</sup> As the Act does not extend to new taxes, resort is had to the practice already described (see n. 3) if it is necessary in the interests of the revenue to collect a new tax before the Act authorising its imposition can be passed, 74 H. C. Deb. 5 s. 945. 1356. 1727.

give the resolution in question statutory effect for a period of four months after the date on which the resolution is expressed to take effect, or, if no such date is expressed, the date on which the resolution is agreed to in the committee of ways and means.<sup>1</sup> The resolution ceases, however, to have statutory effect if it is not agreed to by the house with or without modification within the next ten days on which the house sits after the resolution was agreed to in committee, and if a bill varying or renewing the tax is not read a second time by the house within the next twenty days on which the house sits after the resolution is agreed to.<sup>2</sup> The resolution ceases to have statutory effect in the event of a dissolution or prorogation of Parliament or on the passage of an Act renewing or varying the tax or by the rejection of the provisions giving effect to the resolution. If the resolution is modified by the house it has effect as so modified.<sup>3</sup> The application of the Act is limited to one resolution of the same effect during the same session.<sup>4</sup>

In the procedure adopted by the Commons for the imposition of taxation, the following distinction is generally, if not uniformly, drawn. Taxes for revenue of the year considered in committee of ways and means. Taxes applicable to the immediate exigencies of the public income, which are renewed from year to year, and temporary and other taxes imposed to obtain an immediate source of revenue, are considered by the committee of ways and means.<sup>5</sup>

Fiscal regulations, and alterations of permanent duties, not having directly for their object the increase of revenue, are dealt with by committees of the whole house appointed for the purpose with the recommendation of the Crown.<sup>6</sup> An illustration of this procedure can be drawn from past legislation on the sugar duties. Being an annual duty, the duty on sugar was, until 1846, voted in the committee of ways and means. During that year the duties on sugar, after revision in that committee, were made permanent; and accordingly, when, in 1848, a further revision was proposed of the sugar duties, that revision was proposed in a separate committee of the whole house, and not in the committee of ways and means.<sup>7</sup>

<sup>1</sup> 3 Geo. V. c. 3, s. 1 (2).

<sup>2</sup> *Ib.* s. 1 (1) (a).

<sup>3</sup> *Ib.* s. 1 (1) (b).

<sup>4</sup> *Ib.* s. 1 (1) (c).

<sup>5</sup> 95 C. J. 351. 415. Property Tax and Inhabited House Duty, 1852-53, 108 *ib.* 187; Tobacco Duty, 1878, 133 *ib.* 169. In 1784, the house duty had been increased in a committee on the Smuggling

Acts, 40 *ib.* 58. 245, 24 *Parl. Hist.* 1008; and in 1853, an increase of the Scotch and Irish spirit duties was proposed in a committee on Customs, &c., Acts, to avoid delay and consequent loss of revenue, 108 C. J. 428.

<sup>6</sup> 92 C. J. 499. 500; 97 *ib.* 264.

<sup>7</sup> 103 C. J. 626.

**Additions to permanent duties.** Additions to permanent duties, made for the express purpose of supplying deficiencies in the annual revenue, are considered in the committee of ways and means; and when an objection was raised that certain resolutions, as extending beyond the current financial year, ought not to have originated in that committee, the Speaker overruled the objection, stating that taxation, as an immediate source of revenue, though it may embrace a further period, is properly submitted to the committee of ways and means.<sup>1</sup>

**Specific application of proceeds of taxation.** Statutory provision must be made by Parliament during each financial year, to ensure that all the money therein raised for the service of the Crown be applied to a distinct use, either wholly or partly, within the current financial year: as the proceeds of taxation should not be reserved for accumulation, pending the decision of Parliament, or otherwise left without specific appropriation.<sup>2</sup>

**Procedure in committee of ways and means on Budget statement.** Following the practice used in the committee of supply, which sanctions an explanation of all the army and navy estimates upon the first motions relating to those services (see p. 483), the chancellor of the exchequer founds the "budget" statement, which extends over the finances of the current year (see p. 487), upon the first resolution that he proposes to the committee of ways and means, whatever may be the purport of the resolution; and the debate that ensues follows the lines traversed by the chancellor's statement. On the resolutions subsequently proposed in the committee of ways and means, debate must be relevant to the resolution under consideration.<sup>3</sup> When, however, in the interests of the revenue the committee has agreed to resolutions on the first day of the "budget" discussion before the general debate has been concluded, an arrangement has been made during the discussion of the first resolution, the consent of the chairman not being withheld, for the resumption of the general debate on a subsequent resolution.<sup>4</sup>

<sup>1</sup> 162 H. D. 3 s. 2101.

<sup>2</sup> This was the opinion of the Speaker, stated 24th June, 1890, in deference to the wish of the house, not as a ruling on a question of order, but as a result of his consideration of a matter of constitutional propriety; and the opinion was acted upon by the government, 345 H. D. 3 s. 1799-1805. See also debate on the Irish Development Grant, 120 Parl. Deb. 4 s. 822. 975; 126 ib. 817; Mr. Speaker's ruling on resolution authorizing additional payments to local authorities, 11

H. C. Deb. 5 s. 1094, and ruling and debate on second reading of the Finance Bill, 63 ib. 1567.

<sup>3</sup> 49 Parl. Deb. 4 s. 160; 92 ib. 1097; 122 ib. 434; 144 ib. 1335.

<sup>4</sup> 39 Parl. Deb. 4 s. 1133; 69 ib. 1106; 106 ib. 213; 156 ib. 366; 172 ib. 1235; 188 ib. 490. 550; 52 H. C. Deb. 5 s. 321; 81 ib. 1077. A general discussion has also been allowed on the first of a series of resolutions imposing duties of a similar kind, 5 H. C. Deb. 5 s. 305. 460.

The established usage of the house, in the form and method of dealing with amendments, and not the practice in use in the committee of supply (see p. 481), is followed in the committee of ways and means; and every amendment must relate to the matter under consideration, and is governed by the rule of relevancy.<sup>1</sup>

The imposition of a number of duties of a similar kind,<sup>2</sup> or the renewal of a number of existing taxes,<sup>3</sup> by means of a single resolution has been held to be in order, and the chairman has accordingly refused to divide such a resolution (see p. 412). It has been held, however, that a number of new duties relating to different commodities should not be imposed in a single resolution.<sup>4</sup>

Though it is the function of the committee of ways and means to impose rather than to repeal taxes (see p. 487), examples of the repeal of taxation effected in this committee are to be found upon the journals.<sup>5</sup> Proposals for the variation or modification of taxation can therefore be made in the committee: but these proposals must be grafted upon the financial scheme submitted by the government, and must not affect the balance of ways and means voted for the service of the year. Amendments, therefore, can be proposed to substitute another tax, of equivalent amount, for that proposed by the government, as, for instance, a proposal to substitute probate and legacy duty on real property as an alternative for an inhabited house duty; the necessity of new taxation, to that extent, being already declared on behalf of the Crown.<sup>6</sup>

No augmentation of a tax or duty asked by the Crown, as has been already explained (p. 462), can be proposed to the committee, nor tax imposed, save upon the motion of a minister of the Crown; and accordingly, an amendment designed to extend the imposition of licences upon brewers, as proposed by the government, to other manufacturers, was ruled to be irregular;<sup>7</sup> nor would an amendment to

<sup>1</sup> Amendments formerly offered to substitute for a resolution proposed by the government, an abstract resolution condemning in argumentative terms either their financial proposals or the imposition of a tax (see 108 C. J. 441, 126 H. D. 3 s. 453; Notices of Motions, sess. 1871, p. 681), are not in accordance with existing practice, 11 Parl. Deb. 4 s. 1327; 33 ib. 919.

<sup>2</sup> 164 C. J. 151, 4 H. C. Deb. 5 s. 1467. 1737.

<sup>3</sup> 156 C. J. 139; 171 ib. 108.

<sup>4</sup> 83 H. C. Deb. 5 s. 560. 771.

<sup>5</sup> 10th May, 1766, duties on cotton, wool, &c., 30 C. J. 812; 15th May, 1777, duties on materials for making glass, 36 ib. 508; 4th Dec. 1798, additional house and window duty repealed, and income tax imposed, 54 ib. 56; Irish beer duties repealed, 62 ib. 710; paper duties repealed, 116 ib. 195.

<sup>6</sup> 108 C. J. 187, 123 H. D. 3 s. 1571; see also substitution of a duty on soap for a duty on newspapers, 91 C. J. 524. See also Denison, 89.

<sup>7</sup> Notices of Motions, sess. 1862, p. 407.

extend the imposition of a tax to persons enjoying an exemption therefrom be now permitted.<sup>1</sup>

Questions involving longer or shorter time.

The practice formerly in use regarding the proposal of the questions for the longer or shorter time, had reference to the ancient mode of granting subsidies, which were rendered a lighter burthen by being extended over a longer period (see p. 412) ; and this rule, in principle, is still regarded in the committee of ways and means ;<sup>2</sup> and when the time at which a tax shall commence is being considered, as the most distant time is an alleviation of the burthen, the question upon the most remote date is first put from the chair.

Issue of money from the Consolidated Fund to make good supply grants.

In the committee of ways and means resolutions are also agreed to which authorize the issue from the Consolidated Fund (see p. 501), of sums of money to make good the grants voted by the committee of supply for the public service. These resolutions take the form, " That, towards making good the supply granted to his Majesty for the service of the year ended on the 31st day of March, 19—, the sum of £. be granted out of the Consolidated Fund of the United Kingdom ; " and upon these resolutions when agreed to by the House are founded, first, the sessional Consolidated Fund Acts, and finally the Appropriation Act, which endows those resolutions with complete legal effect. Upon receipt of the order from the sovereign (see p. 446) which gives final validity to a supply grant, the treasury makes the issues to meet those grants out of the Consolidated Fund.<sup>3</sup>

Correspondence in amount of grants of supply, and ways and means.

The drafts upon the Consolidated Fund authorized by the resolutions of the committee of ways and means must not exceed the amount of supply which has previously been granted for the service of the year ; and it is the duty of the Public Bill Office, acting on behalf of the Speaker,<sup>4</sup> to ensure compliance with this rule. In

<sup>1</sup> 77 H. D. 3 s. 637. 751.

<sup>2</sup> 88 C. J. 325. The principle of this rule was not adhered to 6th May, 1853, in putting the question for levying the property tax in the United Kingdom, 108 ib. 467. The proceedings in committee of ways and means, 6th March, 1857, on the tea and sugar duties, afford a good illustration of the application of this rule, 112 ib. 86 ; also on the income tax, 21st July, 1859, 114 ib. 291, and 23rd March, 1860, 115 ib. 153.

<sup>3</sup> The vote of resolutions by the committees of ways and means, and of supply, to authorize and to meet the issue of exchequer bills to defray the temporary

requirements of the executive government, used to form one of the functions of these committees. Resort to this procedure is now obviated by the insertion of clauses in the sessional Consolidated Fund Acts, which authorize the Bank of England, on application from the treasury to advance the sums required for the public service, in respect of any services voted during the same session to the amount covered by the Act. Since 1902 the Acts have also empowered the Treasury to borrow for this purpose by the issue of Treasury Bills, 2 Edw. VII. c. 30, s. 2.

<sup>4</sup> The Speaker superintends the procedure of the house,—a responsibility



deference to this requirement, the final ways and means resolutions on the report of which Consolidated Fund and Appropriation bills are founded (see p. 498), are placed upon the notice paper after the corresponding stages of the supply grants which those resolutions are designed to meet. If necessary, on report, the amount sanctioned by the ways and means resolution is brought by reduction into conformity with the grants made by the committee of supply.<sup>1</sup>

Under standing order No. 51, the question for the Speaker's leaving the chair must be proposed when the house resolves itself into a committee on a message from the Crown, but in the case of other committees of the whole house appointed on the recommendation of the Crown to consider expenditure not included in the estimates for the year's supply, the Speaker leaves the chair without question put. Procedure in these committees follows in principle the procedure of the committee of supply (see p. 478).

The approval or the reduction of the expenditure under consideration, or a modification of the terms and conditions of the charge thereby created, are the matters specially entrusted to such a committee, and to these objects amendments are directed. An amendment proposing to substitute for the resolution an argumentative<sup>2</sup> justification for the refusal of that demand is out of order.

The constitutional principle that no increase can be made of an amount demanded on behalf of the service of the Crown (see p. 480), is obviously binding on these committees. Thus when a committee was considering the resolution, founded on a royal message, for the grant of 1000*l.* a year to Sir Henry Havelock, an amendment to obtain the continuance of the pension to his son was not permitted.<sup>3</sup>

When a committee appointed with the royal recommendation to authorize expenditure in connection with a bill (see p. 458) had reported a resolution and an increase of the amount sanctioned thereby was desired, the order for consideration of the resolution was discharged and another committee of the whole house to the

which justifies to a certain extent a statement, otherwise unfounded, that the duty thus discharged by the Public Bill Office devolves upon the Speaker himself, *Parl. Pap. (H. C.) sess. 1857 (II.), No. 279, p. 27; Todd, ii. 230.*

<sup>1</sup> 166 C. J. 278. The royal order, which is the final authority for the issue

of a supply grant, also prescribes that the amount thereunder issued shall not exceed the amount of the grants out of the ways and means appropriated by Parliament to the service of the year.

<sup>2</sup> 98 *Parl. Deb.* 4 s. 923; 19 H. C. Deb. 5 s. 1624. See also p. 504.

<sup>3</sup> 148 H. D. 3 s. 392.

Committees of the whole house on exceptional expenditure. S. O. 51, Appendix I.

Procedure on amendments.

Increase of grant.

appointment of which the royal recommendation was signified was set up in which the necessary resolution was agreed to.<sup>1</sup>

Procedure upon reports of supply, and ways and means.

In deference to the usage mentioned on p. 459, the resolutions of the committees of supply and ways and means, and other committees of the whole house authorizing the expenditure of public money or imposing taxation are not considered on the day on which they are reported from the committee, but on a future day appointed by the house. A relaxation of this rule is permitted in cases of extraordinary urgency, but not to facilitate the ordinary transaction of public business.<sup>2</sup> During the mutiny of the fleet, the report from the committee of supply of a grant for an increase of pay to the seamen and marines was, on the 8th May, 1797, by order of the house, at once received and agreed to; and on the 24th, an increase of pay was voted to the land forces in the same manner.<sup>3</sup> The house has also ordered under special circumstances, upon a motion of which notice had been given, that resolutions might be considered as soon as they had been reported from the committee of supply,<sup>4</sup> or ways and means,<sup>5</sup> or other committees of the whole house authorizing expenditure.<sup>6</sup> In one case a mandatory direction has been given with this object.<sup>7</sup>

Consideration of reports from the committees of supply and ways and means.

Resolutions reported from the committees of supply and ways and means are considered according to the practice observed regarding other reports from committees of the whole house (see p. 415); and accordingly, the interval before the question, "That the house doth agree with the committee in the said resolution," is proposed, after the resolution has been read a second time, affords the occasion for the proposal of a reduction of the sum specified in the resolution,<sup>8</sup> as no amendment can be moved after the proposal of the question, that the house agrees with the committee in a resolution. Examples are to be found upon the journal of general debate upon the question which used to be proposed (see p. 415), for the second reading of resolutions of these committees, and of the proposal of amendments to that question, and also to the concluding question that the house

<sup>1</sup> 166 C. J. 298. 330. 333.

<sup>2</sup> When, on the 10th of May, 1860, the house ordered a resolution on wine licences, agreed to by the committee of ways and means, to be reported forthwith, to forward the progress of a bill, notice thereof having been taken, the proceeding was annulled, and an order made that the resolution be reported on a future day, 115

C. J. 234. 240, 158 H. D. 3 s. 1161. 1167.

<sup>3</sup> 52 C. J. 552. 605, 33 Parl. Hist. 477.

<sup>4</sup> 165 C. J. 305.

<sup>5</sup> 165 C. J. 103. 305; 169 ib. 445; 170 ib. 157.

<sup>6</sup> 165 C. J. 103.

<sup>7</sup> 165 C. J. 103.

<sup>8</sup> 150 Parl. Deb. 4 s. 287.

agrees to a resolution.<sup>1</sup> It was held more recently that an amendment to the question that the resolutions be now read a second time, must be relevant to a matter contained in the resolutions that awaited a second reading;<sup>2</sup> and on that question general observations were permissible.<sup>3</sup> According to existing practice, procedure upon a report of the grants made by the committees of supply and ways and means consists of debate strictly relevant to each resolution,<sup>4</sup> as it is separately submitted to the house, raised on an amendment proposing a reduction thereof,<sup>5</sup> no other form of amendment being in order,<sup>6</sup> or on the final question that the house agrees with the resolution, though to that question no amendment can be moved. The method of providing money for the supply granted by the resolution, whether by a Consolidated Fund Bill or by a diversion of money under section 2 (1) of the Public Accounts and Charges Act, 1891, cannot be discussed on the report of the resolution.<sup>7</sup>

Before the final question is put upon each resolution, the postponement of the consideration thereof may be proposed,<sup>8</sup> or a motion may be made for its recommitment.<sup>9</sup> When the amount of a supply grant has been reduced in committee, and an alteration of that sum is sought, either by a complete or a partial restoration of the original

Postponement or recommitment.

<sup>1</sup> Education, 102 C. J. 415; Vote of Credit, Lord Dudley Stuart's amendment for an address praying that Parliament might not be prorogued until the house had received more full information as to our foreign relations, 109 C. J. 437, 135 H. D. 3 s. 716; Expenditure of the State, 112 C. J. 94; American Prize Courts, 118 ib. 322; 127 ib. 120; 129 ib. 263. Two instances exist, 20th Dec. 1796, and 1st July, 1823, 52 C. J. 220; 73 ib. 443, of amendments whereby it was sought to attach a condition to a grant upon the report of the resolutions: but the rule forbidding such an amendment, in force in committee, is equally applicable upon the report stage of a grant.

<sup>2</sup> 243 H. D. 3 s. 1549; 249 ib. 531.

<sup>3</sup> 174 H. D. 3 s. 1551; 249 ib. 531.

<sup>4</sup> 178 H. D. 3 s. 360; 334 ib. 771; 91 Parl. Deb. 4 s. 1130; 119 ib. 1488 et seq.; 133 ib. 1339, 1355; 134 ib. 346; 137 ib. 212; 171 ib. 259; 2 H. C. Deb. 5 s. 364, 1649; 52 ib. 2077; 69 ib. 1329; 74 ib. 843; 75 ib. 1535; 80 ib. 2294. See also Mr. Deputy-Speaker's remarks in permitting a general debate on the report of vote A of the Navy Estimates,

51 ib. 58.

<sup>5</sup> 103 C. J. 790; 114 ib. 92; 125 ib. 157, 338; 135 ib. 367, 372, 375; 143 ib. 473; 144 ib. 213, 445, etc. Amendment proposed to proposed amendment, 76 ib. 487.

<sup>6</sup> 2 Parl. Deb. 4 s. 1172.

<sup>7</sup> 137 Parl. Deb. 4 s. 214. For a similar ruling on the second reading of a Consolidated Fund Bill, see 147 Parl. Deb. 4 s. 1445.

<sup>8</sup> 119 C. J. 324; 142 ib. 322, 386; 149 ib. 397; 159 ib. 406.

<sup>9</sup> 77 C. J. 314; 113 ib. 211; 117 ib. 81, 87, 93; 135 ib. 367, 372, 375; 141 ib. 88, 92, 104, 108; ways and means resolutions, 124 ib. 203; 128 ib. 162; 135 ib. 199. A motion offered by an unofficial member to recommit a resolution has been refused by the Speaker, as the only object of recommitting a resolution is to increase its amount, which cannot be done except on the motion of a minister, 8 H. C. Deb. 5 s. 750. A similar motion made by an unofficial member on the 27th May, 1903 (123 Parl. Deb. 4 s. 64) was not entered in the Journal of the House by the Speaker's direction.

sum, the resolution is recommitted, as in committee alone an addition to the public burthens can be made.<sup>1</sup> If a recommitted grant has been increased on reconsideration by the committee, the resolution specifies that, in addition to the sum already granted, a further sum has been granted for the purpose therein stated.<sup>2</sup>

Amend-  
ments to  
resolu-  
tions on  
report.

In accordance with the principle that amendments imposing a charge upon the people can be proposed only in committee, an amendment to a resolution to increase a charge or to impose it on persons at present exempt is out of order.<sup>3</sup> If a reduction of the amount in a resolution is moved, the question that the Speaker puts from the chair is that the original sum "stand part of the said resolution."<sup>4</sup> If that question passes in the negative, the question follows that the reduced amount "be there inserted," and upon that question a further amendment may be proposed. Thus, by way of example, when a resolution was read for a grant of 34,026*l.* (Houses of Parliament), an amendment was proposed to leave out 34,026*l.*, and insert instead 28,526*l.* The original sum, 34,026*l.*, was negatived; the insertion of 28,526*l.* was moved, when a proposal was made to substitute for 28,526*l.* the sum of 31,026*l.* The house negatived the consequent question, namely, that "28,526*l.* stand part of the proposed amendment," and then agreed to the insertion of the sum of 31,026*l.*<sup>5</sup>

Reports of  
other  
commit-  
tees of the  
whole  
house  
imposing  
charges.

The reports of committees other than the committees of supply and ways and means which authorize expenditure or impose taxation are dealt with according to the practice in force regarding the reports from a committee of the whole house, subject, as regards amendments, to the rules which govern the consideration of financial resolutions (see pp. 415, 494), and, if necessary, bills are ordered in upon the resolutions, or the resolutions, as amended, when agreed to by the house.

Bills  
founded  
on ways  
and  
means  
resolu-  
tions.

No further proceeding is founded on the reports of the supply grants: but when resolutions of the committee of ways and means are agreed to, bills, of which the most important are the Finance Bill and Consolidated Fund Bills, are ordered thereon, to carry the resolutions into effect (see p. 350). When such a bill has been ordered, but not presented, the members appointed to prepare the

<sup>1</sup> See amendment proposed by Mr. Greville, 27th Jan. 1767, 31 C. J. 76; 3 Hatsell, 179.

<sup>2</sup> 113 C. J. 320; 135 ib. 375; 141 ib. 108.

<sup>3</sup> 52 H. C. Deb. 5 s. 2108.

<sup>4</sup> 3 Hatsell, 184, n.; 126 C. J. 107; 144 ib. 214. 445; 145 ib. 364. 512.

<sup>5</sup> 124 C. J. 312.

bill may be instructed to make provision therein, pursuant to such further resolutions of the committee<sup>1</sup> or the resolutions of a committee of the whole house appointed on the recommendation of the crown,<sup>2</sup> as have been agreed to since the bill was ordered; or if the bill has been read a second time an instruction is given to the committee on the bill to make such provision therein.<sup>3</sup> If a bill has not been ordered upon the earlier of a series of resolutions, a bill is ordered upon the last resolution, when it has been agreed to by the house, and the members appointed to prepare and bring in the bill are instructed to make provision therein in respect of the earlier resolutions.<sup>4</sup>

When a bill brought in on ways and means resolutions, or on the resolutions of any other committee of the whole house, is withdrawn, and it is expedient to bring in another bill of a similar nature, the usage is to read again the resolutions on which the bill was founded, and to order another bill, either on all, or on some of those resolutions.<sup>5</sup>

Debate and amendment on the stages of the Finance Bill<sup>6</sup> or other bills imposing taxes are governed by the ordinary rules of relevancy<sup>7</sup> (see p. 280) and, if any of the provisions of the bill should be found to go beyond the resolutions of the committee of ways and means or other committee of the whole house, as agreed to by the house on report, upon which the bill is founded, a further resolution must be passed by the committee of ways and means<sup>8</sup> or other committee of the whole house,<sup>9</sup> and agreed to by the house before those provisions are considered in committee on the bill or the bill must be amended so as to conform to the resolutions to which the house has agreed.<sup>10</sup>

Finance  
Bill.  
Debate  
and  
amend-  
ments.

<sup>1</sup> 124 C. J. 132; 143 ib. 145; 145 ib. 260. For similar procedure in the case of a bill ordered upon the resolution of a committee of the whole house authorizing expenditure, see 169 C. J. 391, and of the Consolidated Fund (Appropriation) Bill, ib. 432.

<sup>2</sup> 162 C. J. 174.

<sup>3</sup> 100 C. J. 743. 784; 143 ib. 172. 173; 144 ib. 171; 170 ib. 277. For a case in which a bill has been re-committed for the same purpose, see 171 ib. 135. 137.

<sup>4</sup> 170 C. J. 134; 171 ib. 65.

<sup>5</sup> 111 C. J. 126; 112 ib. 185; 140 ib. 264. 306.

<sup>6</sup> The bill embodying the financial scheme of the year was first called by this title in 1894, before which year it had been called the Customs and Inland Revenue Bill. For the history of the practice of introducing the whole financial scheme of the year in one bill, see p. 517,

and 24 Parl. Deb. 4 s. 1203.

<sup>7</sup> 33 Parl. Deb. 4 s. 1376; 123 ib. 327; 146 ib. 589; 158 ib. 355. When the new taxes proposed in a Budget and its other financial proposals have been embodied in separate bills, the Speaker has declined to allow a general review of the finances of the country or a discussion of existing duties on the stages of the bill imposing the new taxes, 81 H. C. Deb. 5 s. 1507. 1509. 1531.

<sup>8</sup> 136 C. J. 240; 149 ib. 204. 236, 24 Parl. Deb. 4 s. 1201.

<sup>9</sup> 162 C. J. 311, 177 Parl. Deb. 4 s. 642.

<sup>10</sup> 149 C. J. 204, 25 Parl. Deb. 4 s. 982.

Where the provisions of the bill not authorized by resolutions have not been provisions imposing taxation or charges an instruction to the committee to enable it to consider these provisions has been allowed, 169 C. J. 307, 64 H. C. Deb. 5 s. 383.

Amendments to the bill which are not covered by resolutions of the committee of ways and means <sup>1</sup> or other committee of the whole house <sup>2</sup> are out of order. Amendments have also been ruled out of order as not relating to the finance of the year.<sup>3</sup> When the bill contains exceptions from a duty which were not included in the resolution of the committee of ways and means imposing the duty as agreed to by the house amendments to the bill to leave out such exceptions are in order.<sup>4</sup> Amendments extending the period of liability to a tax beyond the provisions of the bill are in order if they are within the terms of the resolution of the committee of ways and means as agreed to by the house.<sup>5</sup> In other respects the rules relating to amendments to bills already described (see p. 369), apply to amendments to a Finance Bill.

Amend-  
ments for  
remission  
of taxa-  
tion.

When one of the resolutions upon which such a Bill is founded is one expressed in general terms, such as that it is expedient to amend the law relating to inland revenue, no instruction is needed to enable the committee thereon to receive clauses for the remission of inland revenue duties, irrespective of the scope and object of the bill.<sup>6</sup>

Considera-  
tion, as  
amended,  
of Finance  
Bill.

On the consideration by the house of the Finance Bill, as amended in committee, the house is subject to the same restrictions as regards the imposition of charges on the people as at other times. A new clause or an amendment cannot, therefore, be proposed at that stage for the inclusion in the liability to a tax of persons who were not subject to it while the bill was in committee,<sup>7</sup> or for the imposition of a charge.<sup>8</sup> When an exemption from an existing tax has been granted by a provision in the bill as introduced or by an amendment made in committee, the exemption can be struck out on report by the house on the principle stated on page 462, as the effect of such action is to leave the tax as it was.<sup>9</sup> This practice applies equally to other bills imposing taxation.

Consoli-  
dated  
Fund and  
Appropri-  
ation  
Bills

The sums of money granted, in advance, by the committee of supply for the service of the year, are issued, as has been explained, during the first six months of every session, under the authority of the

<sup>1</sup> 24 Parl. Deb. 4 s. 1219; 96 ib. 473; 136 ib. 591; 138 ib. 527; 164 C. J. 473, 11 H. C. Deb. 5 s. 1763; 41 ib. 2425, 2451; 64 ib. 690; 75 ib. 202, 204, 217; 83 ib. 941.

<sup>2</sup> 177 Parl. Deb. 4 s. 594, 642; 32 H. C. Deb. 5 s. 2096; 75 ib. 680, 684.

<sup>3</sup> 41 H. C. Deb. 5 s. 2859.

<sup>4</sup> 75 H. C. Deb. 5 s. 218.

<sup>5</sup> 75 H. C. Deb. 5 s. 249.

<sup>6</sup> For the scope of debate upon such a resolution, see 133 Parl. Deb. 4 s. 1239.

<sup>7</sup> 73 H. C. Deb. 5 s. 763, 766; 76 ib. 1087, 1249, 1251.

<sup>8</sup> 76 H. C. Deb. 5 s. 1321.

<sup>9</sup> 76 H. C. Deb. 5 s. 1074.

Consolidated Fund Acts (see p. 455), because the Appropriation Bill, which gives complete legal sanction to those issues, cannot be introduced until the financial arrangements of the year are concluded.<sup>1</sup> When all the supply grants necessary for the service of the year have been voted, the resolution finally proposed in the committee of ways and means (see p. 492) is for a grant out of the Consolidated Fund, which provides the balance of ways and means required to cover the supply grants voted for the current financial year. Upon the report of that resolution, the Appropriation Bill is brought in, which authorizes the issue of the remaining sums necessary for the service of the year out of the Consolidated Fund.<sup>2</sup> The bill also enacts that each grant voted during the session shall be expended upon the service to which it is thereby appropriated, according to the terms prescribed by the resolutions voted in the committee of supply; and the bill also ratifies the application of the surpluses upon the army and navy grants, which is described upon p. 449.

When, during the course of a session, an increase in the ranks of the army above the number specified in the annual estimates has been obtained<sup>3</sup> (see p. 453), it was formerly necessary to include among the provisions of the year's Appropriation Bill a statement of the number of that additional force: but this statement is no longer required, as permanent provision is made to meet such additions to the army by section 2 of the Army (Annual) Acts.<sup>4</sup>

Debate and amendment on the stages of the Appropriation Bill and other Consolidated Fund bills must be relevant to the bill and must be confined to the conduct or action of those who receive or administer the grants specified in the bill in the case of an Appropriation Bill,<sup>5</sup> or, in the case of those Consolidated Fund bills which do not include appropriation,<sup>6</sup> the grants of supply which form

Debate  
thereon.

<sup>1</sup> 57 H. D. 3 s. 458.

<sup>2</sup> 110 C. J. 443; 145 ib. 579. The re-opening of the committee of supply and the voting of further grants of money after the Appropriation Act has been passed involves a second Appropriation Bill, 157 C. J. 493; 170 ib. 293.

<sup>3</sup> 140 C. J. 161. 180. 320.

<sup>4</sup> Compare Appropriation Acts, 1870 and 1882, with the Act of 1885.

<sup>5</sup> 143 H. D. 3 s. 558. 641; 180 ib. 836; 231 ib. 1119. 1160; 265 ib. 736; 77 Parl. Deb. 4 s. 681; 127 ib. 867. For amend-

ments on stages, see 137 C. J. 482. 481. The annual education statement has been made by the minister for that department on the second reading of the Appropriation Bill, 17th June, 1886, 306 H. D. 3 s. 1723; 16th June, 1892, 5 Parl. Deb. 4 s. 1355.

<sup>6</sup> An amendment to appropriate the money authorized to be issued out of the Consolidated Fund under such a bill has been ruled out of order, 2 H. C. Deb. 5 s. 306.

the basis of the ways and means resolutions upon which the bills are founded.<sup>1</sup> As an illustration of this rule, it may be mentioned that discussion has been permitted on the state of Europe, so far as it depended on the conduct of the executive government, including, for example, the use made of the naval forces, or the action of the diplomatic servants of the Crown;<sup>2</sup> whilst, on the other hand, observations and amendments relating to the constitution of Great Britain,<sup>3</sup> to the House of Lords,<sup>4</sup> to the course of action taken by that house with regard to various bills,<sup>5</sup> the tenure of land in Ireland,<sup>6</sup> the desirability of establishing a ministry of agriculture,<sup>7</sup> payments charged on the Consolidated Fund,<sup>8</sup> the expense of actions at law, and alleged miscarriages of justice,<sup>9</sup> and the action of magistrates,<sup>10</sup> were held to be irrelevant. Nor has the fact that officials of a department have been engaged in collecting information with regard to proposals of the government for legislation in a future session been held to justify a claim to discuss such proposals.<sup>11</sup> As in committee of supply (see p. 486), legislation cannot be discussed on a Consolidated Fund or Appropriation Bill.<sup>12</sup>

Com-  
mittee  
practice.

The principle of relevancy is also strictly applied to debate and amendments in the committee on these bills. On the clauses dealing with the issue of money from the Consolidated Fund subjects involving expenditure cannot be discussed<sup>13</sup> and on those clauses the object of which is to ensure the application of the grants made by Parliament to the objects defined by the resolutions of the committee of supply, debate and amendment must be restricted to the matter of appropriation. The conduct of the officials or of the departments who receive the supply grants cannot be challenged in the committee

<sup>1</sup> 96 Parl. Deb. 4 s. 147; 147 ib. 1459; 171 ib. 974; 186 ib. 1482; 2 H. C. Deb. 5 s. 139. 1938; 54 ib. 1820 et seq.; 74 ib. 540. 542; 81 ib. 227; 84 ib. 1751. For amendments on stages, see second reading of Consolidated Fund (No. 1) Bill, 1884 (Egyptian policy), 139 C. J. 138; second reading of Consolidated Fund (No. 3) Bill, 1885 (Policy with respect to vote of credit granted by the bill), 140 C. J. 221.

<sup>2</sup> 172 H. D. 3 s. 1246; 176 ib. 1859; 231 ib. 1160; 265 ib. 768; 75 H. C. Deb. 5 s. 1764.

<sup>3</sup> 231 H. D. 3 s. 1119.

<sup>4</sup> 256 H. D. 3 s. 472.

<sup>5</sup> 256 H. D. 3 s. 1232; 29 Parl. Deb. 4 s. 409; 35 ib. 290.

<sup>6</sup> 180 H. D. 3 s. 836.

<sup>7</sup> 321 H. D. 3 s. 536.

<sup>8</sup> 321 H. D. 3 s. 217; 132 Parl. Deb. 4 s. 696.

<sup>9</sup> 140 Parl. Deb. 4 s. 527.

<sup>10</sup> 193 Parl. Deb. 4 s. 1845; 8 H. C. Deb. 5 s. 1916.

<sup>11</sup> 127 Parl. Deb. 4 s. 869.

<sup>12</sup> 99 Parl. Deb. 4 s. 1092; 140 ib. 531; 143 ib. 1243; 151 ib. 691; 171 ib. 986; 180 ib. 1720; 41 H. C. Deb. 5 s. 2750. 2761-2.

<sup>13</sup> 332 H. D. 3 s. 977. 978; 340 ib. 609; 148 Parl. Deb. 4 s. 881. Debate on the sum to be issued or an amendment to effect its reduction is out of order, 171 Parl. Deb. 4 s. 776; 50 H. C. Deb. 5 s. 1676. See also p. 495, n. 7.



on the bill.<sup>1</sup> Amendments cannot be moved to clauses or schedules to effect the omission or reduction of the amount of a grant,<sup>2</sup> or of the appropriations in aid of it,<sup>3</sup> or an alteration in the destination of a grant.<sup>4</sup> The enacting words of the bill are not open to amendment.<sup>5</sup>

A Consolidated Fund, Appropriation or Finance Bill or other bill for granting aids or supplies to the Crown that has passed both houses<sup>6</sup> is returned into the custody of the Commons; and when that house is summoned to the House of Lords, to attend the sovereign or the lords commissioners, the bill is handed by the Speaker, at the bar of the House of Lords, to the Clerk of the Parliaments, to receive the royal assent. When the sovereign is present in person (see p. 192), the Speaker prefaces the delivery of such bills with a short speech concerning the principal measures which have received the assent of Parliament during the session, in which he does not omit to mention the supplies granted by the Commons.

Royal assent to bills of aids and supply.

The passing of the Appropriation Bill takes place, ordinarily, but not necessarily, on the day appointed for the prorogation of Parliament. On several occasions, when special circumstances have demanded an adjournment, instead of a prorogation (see p. 52), the royal assent has nevertheless been given to the Appropriation Act; and on the meeting of Parliament, after the adjournment, the outstanding business has been proceeded with. As the necessary financial bills have been passed, and the committee of supply has been closed, the special sitting has then been held, without any disturbance of the financial arrangements of the year.<sup>7</sup>

Adjournments after passing of Appropriation Acts.

The proceeds of taxation, and other sums of money received by the treasury on behalf of the Crown, are carried to the Consolidated Fund established, by the Act 27 George III. c. 13, to provide a fund "into which shall flow every stream of the public revenue, and from

The Consolidated Fund.

<sup>1</sup> 340 H. D. 3 s. 609; 148 Parl. Deb. 4 s. 881; 74 H. C. Deb. 5 s. 585.

<sup>2</sup> 292 H. D. 3 s. 588; 332 ib. 977. 980-983. 985; 29 Parl. Deb. 4 s. 410. 415.

<sup>3</sup> 140 Parl. Deb. 4 s. 184.

<sup>4</sup> 256 H. D. 3 s. 1240.

<sup>5</sup> 332 H. D. 3 s. 993. 1010; 339 ib. 219; 80 Parl. Deb. 4 s. 1364.

<sup>6</sup> Appropriation bills, in common with bills brought in upon the royal recommendation, are, by usage (see p. 384), not passed through more than one stage at each sitting of the House of Commons.

<sup>7</sup> In 1882, the Appropriation Act received the royal assent on the 17th August; and on the following day both houses adjourned until 23rd October. On the reassembling of Parliament, the regularity of the adjournment was challenged in the Commons, on the ground that, the Appropriation Act having been passed, no further business could be proceeded with, but the adjournment was approved by a large majority, 137 C. J. 489, 274 H. D. 3 s. 3.

whence shall issue the supply for every public service,"<sup>1</sup> and the sums of money required to defray the public expenditure are drawn from that fund.<sup>2</sup>

Sessional  
charges  
upon the  
Consoli-  
dated  
Fund.

The drafts which are made upon the Consolidated Fund, under the authority of the sessional Consolidated Fund and Appropriation Acts, are available for the supply of any service belonging to the financial year to which those Acts apply: but the drafts authorized for the supply of one financial year are not applicable to the supply of another financial year. Nor are the drafts made to meet the supply voted in one parliamentary session applicable to the supply voted in another session. Thus grants out of the Consolidated Fund, devoted by the legislation of session 1885 to the service of the financial year 1885-86, could not be applied to the supplementary grants voted during session 1886 for the year 1885-86. These grants were not available until fresh issues out of the Consolidated Fund were provided in the session of 1886 for the financial year 1885-86.

Perma-  
nent  
charges  
upon the  
Consoli-  
dated  
Fund.

Besides the drafts made upon the Consolidated Fund to meet the requirements created by the legislation of each session, permanent charges for the service of the state are secured by statute upon that fund which the treasury is bound to defray, as directed by law. In this expenditure are included the interest of the national debt, the civil list of his Majesty, the annuities of the royal family, and the salaries and pensions of the judges and of other public officers.

Navy and  
Army Ex-  
penditure  
commit-  
tee.

A sessional committee of the whole house is appointed to consider, and ratify by resolutions the application by the navy and army departments of surpluses to meet deficiencies, as has been already explained<sup>3</sup> (see p. 449); and the clause inserted in every Appropriation Act, which confers the sanction of Parliament to that method of dealing with those grants, is based on those resolutions.

Reports of  
the Comp-  
troller and  
Auditor-  
General.

The house is further assisted in maintaining the due enforcement of the Appropriation Act, by reports from the comptroller and

<sup>1</sup> Parl. Pap. (H. C.) sess. 1869, No. 366, Part II. p. 327.

<sup>2</sup> Upon a system, commenced in the year 1881, under the sanction of the comptroller-general, the treasury, and the public accounts committee, the cash receipts of public departments, without being paid into the exchequer, may be applied as an appropriation in aid of money provided by Parliament for the service of the department to which such receipts have been paid, in pursuance of

a treasury minute that is laid before Parliament. Public Accounts committee, Reports, Parl. Pap. (H. C.) sess. 1881, No. 350; *ib.* sess. 1883, No. 187; Public Accounts and Charges Act, 1891, s. 2. The amounts so to be applied are authorized by the annual Appropriation Acts, *e.g.* 57 & 58 Vict. c. 59, s. 3, 2 Parl. Deb. 4 s. 1115.

<sup>3</sup> In the committee criticism of this system of applying surpluses has been ruled out of order, 162 Parl. Deb. 4 s. 574.

auditor-general, under the Exchequer and Audit Departments Act, 1866, regarding the application and the appropriation of the grants, and such other matters as are, in his judgment, connected therewith.

The house also appoints, at the commencement of every session, the committee of public accounts, "for the examination of the accounts, showing the appropriation of the sums granted by Parliament to meet the public expenditure."<sup>1</sup> The number of members of the committee, fixed by standing order No. 75 at eleven, is usually increased to fifteen by order of the house. The function of this committee is to ascertain that the parliamentary grants for each financial year, including supplementary grants, have been applied to the object which Parliament prescribed, and to recheck the official audit created by the Exchequer and Audit Departments Act, 1866. The committee also scrutinizes the causes which have led to any excesses over parliamentary grants, and the application of savings on the grants made to the naval and military departments. The researches made by the committee, and the publication of their reports, ensure, on behalf of the House of Commons, an effectual examination of the public accounts.<sup>2</sup>

The house reviews the financial condition of India in a committee of the whole house, appointed on the motion of a minister of the Crown, to consider a statement of the financial position of India during the past year, based on the accounts of the revenue and expenditure of India, which have, during the session, been presented to Parliament.<sup>3</sup> The question must be put for the Speaker's leaving the chair for this committee, as it is exempted from the operation of standing order No. 51, in order to create an opportunity for more

Public  
Accounts  
commit-  
tee.  
S. O. 75,  
Appendix  
I.

East  
India  
Revenue  
Accounts.

S. O. 51,  
Appendix  
I.

<sup>1</sup> The committee was appointed for the first time in 1861, 116 C. J. 130.

<sup>2</sup> The reference of the estimates to the consideration of a select committee has been occasionally advocated in the house, Todd, ii. 206. During the sessions of 1887 and 1888, select committees were appointed to examine into the army, navy, and revenue estimates; and the select committees on procedure on the estimates, 1888, and national expenditure, 1903, reported regarding the extent to which the estimates might, in their opinion, be subjected to this method of examination, 142 C. J. 233; 143 ib. 95. 96; Parl. Pap. (H. C.) sess. 1888, No. 281; ib. sess. 1903, No. 242. In sessions 1912-13, 1913, and 1914, a select com-

mittee was appointed to examine and report on such of the estimates presented to the house as might seem fit to the committee, 167 C. J. 108; 168 ib. 16; 169 ib. 38.

<sup>3</sup> These accounts are presented pursuant to 5 & 6 Geo. V. c. 61, s. 26, which re-enacted 21 & 22 Vict. c. 106, s. 53. The resolution reported from the committee was not considered by the house in session 1880, the prorogation having intervened, 135 C. J. 434. 436, and in session 1895 and subsequent sessions, a day has not been appointed for receiving the report of the resolution, 150 C. J. 389. In session 1914 the committee was appointed but no further proceedings were taken, and in sessions 1914-16 and 1916 the committee was not appointed.

general debate than can arise in committee, where amendment and debate must be confined to the economical and financial condition of India, as disclosed by the finance accounts relating to those territories.<sup>1</sup> When, to the customary form of motion tendered to the committee certifying the amount of revenue and expenditure in India during the past financial year, a member proposed to move an amendment affirming that, for the causes therein stated, the house could not consider the motion, the chairman called the attention of the committee to the character of the amendment, to guard against a supposition than an abstract expression of opinion, as an alternative to the proposition before the committee, could be entertained. The amendment was consequently not moved by the member who placed it upon the notice paper.<sup>2</sup>

Greenwich Hospital.

As under the Greenwich Hospital Act, 1885 (48 & 49 Vict. c. 42), the expenditure on this hospital is defrayed out of the revenues thereof, a statement showing, under the proper heads, the income and expenditure of the hospital, is every year submitted, by a resolution, to the consideration and approval of the house.<sup>3</sup>

Charges not subject to royal recommendation.

S. O. 71, Appendix I.

The practice requiring the recommendation of the Crown, and a preliminary committee for proposals involving public expenditure has been explained (see p. 456). The procedure must now be considered, which arises under standing order No. 71 regarding the imposition of charges upon the people without the recommendation of the Crown, in cases where the charge does not form a portion of the Crown revenue, and the expenditure is not drawn from the exchequer.

Procedure on bills relating to such charges. Rates.

Bills dealing with charges of this nature are not introduced on resolutions reported from a committee of the whole house appointed under standing order No. 71. In consequence bills authorizing the levy or application of rates for local purposes, administered by authorities, acting on behalf of the ratepayers, are introduced without a preliminary committee,<sup>4</sup> and the clauses relating to those objects are not printed in italics (see p. 458).<sup>5</sup>

<sup>1</sup> 330 H. D. 3 s. 176. 208.

<sup>2</sup> 348 H. D. 3 s. 1044.

<sup>3</sup> 146 C. J. 518.

<sup>4</sup> Metropolis Police Bill, 84 C. J. 233; Coal Trade (Port of London) bills, 86 ib. 558; Poor Law Amendment Bill, 1834; Municipal Corporations Bill, 1835; Poor Relief (Ireland) Bill, 93 ib. 90; Collection of Rates Bill, 1839; Highway Rates Bill, 94 ib. 363; Prisons (Scotland) Bill, 94 ib. 22; Metropolis Local Management bills,

1855 and 1858; Union Relief Aid (Distress in Manufacturing Districts) Bill, 1862; Rating Bill, Valuation Bill, and Consolidated Rate Bill, 1873. But the Rate in Aid Bill (Irish Famine), 1849, originated in committee, as it levied a general rate, the funds being under the management of government officers.

<sup>5</sup> 179 H. D. 3 s. 480. In the case of the Main Drainage (Metropolis) Bill, 1858, and the Thames Embankment Bill, 1862,

The same principle is applied to bills relating to church rates, and Church rates, &c. to the incidence and the recovery of tithe; and the Tithe Commutation Bill, 1836, the Tithe bills of 1890 and 1891, and the Church Rates Commutation Bill, 1864, were ordered in on motion.<sup>1</sup> Standing order No. 71 has been held not to apply to bills imposing charges upon any particular class of persons for their own use and benefit.<sup>2</sup>

Though bills creating charges which are not within standing order No. 71 are not introduced in committee, still, in deference to the principle enforced by that standing order, no provisions for the creation of any form of charge upon the people can be inserted in a bill whilst the Speaker is in the chair; though the necessity of adjourning the committee stage thereon to a future day does not arise. Accordingly, when clauses or amendments dealing with rates, tolls, and other charges imposed for local purposes, are submitted to the house on the report stage of a bill, it is the practice to move that the house should forthwith go into committee thereon, or that the bill should be re-committed in respect of the clauses or amendment in question.<sup>3</sup> The Speaker would decline, if necessary, to propose such provisions from the chair<sup>4</sup> (see p. 458).

Funds set apart for purposes of public utility, but not for the Funds devoted to objects of public utility.

as the expense of the proposed works was to be paid out of local rates upon the metropolis an objection that these bills ought to be introduced in committee was overruled, 151 H. D. 3 s. 1516; 165 ib. 1826, and in the case of the Corrupt Practices Prevention Bill, 1858, an objection that a clause imposing a charge upon county and borough rates should have been authorized by a previous committee resolution, was overruled, 151 ib. 1601.

<sup>1</sup> 91 C. J. 17; 174 H. D. 3 s. 1701. During the session of 1833, notice was taken that the Church in Ireland Bill (which proposed to levy "an annual tax" upon all benefices in lieu of firstfruits) should have originated in a committee. A select committee appointed to examine precedents reported that no case precisely similar had been discovered, but "that the general spirit of the standing orders and resolutions of the house required that every proposition to impose a burthen or charge on any class of the people should receive its first discussion in a committee of the whole house," and the bill was consequently withdrawn, 88 C.

J. 185; Parl. Pap. (H. C.) sess. 1833, No. 86. The opinion expressed by that committee has not influenced the practice of the house.

<sup>2</sup> See Speaker's ruling in case of the Licensing Bill, 137 Parl. Deb. 4 s. 1223. The Merchant Seamen's Fund bills, 1848 and 1850, imposing a duty on ships in the merchant service, and authorizing a deduction from the wages of the seamen, &c., to form funds for their relief, were, being trade bills, brought in upon a committee resolution, in accordance with the practice that required such a procedure in the case of bills relating to trade and religion, see p. 350, n. 3, 103 C. J. 512; 105 ib. 54. These committees must not be confused with committees authorizing expenditure.

<sup>3</sup> 97 C. J. 424; 119 ib. 316; 120 ib. 356; 171 ib. 58.

<sup>4</sup> 41 Parl. Deb. 4 s. 488, 489; 109 ib. 930; 151 ib. 407; 180 ib. 900; 196 ib. 109; 81 H. C. Deb. 5 s. 2019, 2024. In the case of a private bill, 41 Parl. Deb. 4 s. 502.

public service of the United Kingdom, such as the former fee funds of the Court of Chancery,<sup>1</sup> and the church funds accruing under the Irish Church Act, are not within the scope of the standing orders.<sup>2</sup>

Reduction  
of charges  
upon the  
people.

Proposals to reduce a burthen upon the people may be made in the house or in committee, no special form of procedure being prescribed for such a motion,<sup>3</sup> or for the introduction of bills which are strictly confined to the reduction of a tax or charge upon the people. It follows that amendments for the reduction of such charges, as taxes, rates, salaries, tolls, and penalties, can be moved when a bill is considered upon report; and this has been permitted even when, by indirect effect, an amendment created a certain amount of charge. For instance, it was held allowable, upon this stage, to strike out an exemption from a tax, which had been agreed to by the committee on the bill; <sup>4</sup> and also to omit a clause imposing a charge upon the ratepayers, although the omission of the clause left other parties, already liable by law, still chargeable with certain expenses (see also p. 462).<sup>5</sup>

Draw-  
backs and  
allow-  
ances.

Bounties, drawbacks, or allowances, involving payments out of the revenue, have usually been proposed in committee: but if an allowance be merely a deduction from the amount of a proposed duty, it may be entertained by the house, or by the committee on the bill, without any preliminary vote in committee.<sup>6</sup> In 1865, it was agreed, on consideration, that the proposal to reduce the existing drawback on the export of sugar, should originate in committee, as it was equivalent to an increase of charge upon all importers of sugar who desired to export it.<sup>7</sup>

Packet  
and tele-  
graphic  
contracts.  
*S. O. 72--  
74, Ap-  
pendix I.*

It may be mentioned, in conclusion, that, as a check upon corrupt or improvident contracts, it is provided by standing orders, that in every contract for packet and telegraphic services beyond sea, a condition should be inserted, that the contract shall not be binding until it has been approved by a resolution of the house. Every such contract is to be forthwith laid upon the table, if Parliament be sitting, or otherwise within fourteen days after it assembles, with a copy of a treasury minute setting forth the grounds upon which the contract

<sup>1</sup> Courts of Justice Building Bill, 165 H. D. 3 s. 1561.

<sup>2</sup> 134 C. J. 332. 350; 137 ib. 451; 10 Parl. Deb. 4 s. 1413.

<sup>3</sup> See proceedings in committee on Customs, &c., Acts, 1st July, 1853, by which the advertisement duty, proposed to be lowered from 1s. 6d. to 6d., was

finally reduced to 0, 108 C. J. 640, 128 H. D. 3 s. 1091. 1128.

<sup>4</sup> Drainage Bill, 1840. See also p. 498.

<sup>5</sup> 193 H. D. 3 s. 1688.

<sup>6</sup> Paper Duty Repeal Bill, 1860, cl. 2, 157 H. D. 3 s. 2094.

<sup>7</sup> 120 C. J. 313.

was authorized.<sup>1</sup> No such contract is to be confirmed, nor power given to the government to enter into agreements, by which obligations at the public charge are undertaken, by any private Act. All such contracts are, accordingly, approved by resolutions of the house.<sup>2</sup>

The consent of Parliament, necessary to legalize "the raising and keeping" of a standing army within the United Kingdom, in time of peace, is so intimately connected with the grant of supplies for the service of the Crown,<sup>3</sup> that the bill which gives that consent, and provides for the regulation and discipline of the army,<sup>4</sup> forms one of those measures which of necessity must be introduced in the House of Commons. When the house has agreed to the resolutions voted by the committee of supply, which determine the number of men who shall be maintained during the year for the army and for the sea services, the bill for the regulation of the army is ordered in. A complete code of military law was formerly re-enacted by each sessional Mutiny Bill. In the year 1879, this legislative necessity was obviated, and a permanent Act was passed for the discipline and regulation of the army; <sup>5</sup> though, to secure the rights of Parliament to give or to withhold its consent to a standing army, the permanent Act is inoperative, unless it be put in force by an annual Act, to which, under established constitutional usage, only a twelve months' duration is given. By this limitation, the Commons, in addition to their control over the number of the naval and military forces, and the yearly sums to be appropriated to their support, reserve to themselves the power of determining whether a standing army shall be kept on foot. The Mutiny Bill of former sessions is accordingly replaced by the Army (Annual) Bill, a bill which must become law before the 30th April in each year, the day on which the Army Act as continued by the Army (Annual) Act of the previous session expires.<sup>6</sup> On the second or third reading of an Army (Annual) Bill, debate on the general purposes of the army and the policy by which

The Army  
(Annual)  
Bill.

<sup>1</sup> On the 16th June, 1873, in the case of the Cape of Good Hope and Zanzibar mail contract, notice being taken that a treasury letter had been presented instead of a treasury minute, the order for resuming the adjourned debate on the contract was discharged; and amended papers were presented.

<sup>2</sup> 125 C. J. 414, &c.

<sup>3</sup> 24 Parl. Hist. 720.

<sup>4</sup> As to provisions coming within the

scope of these words, see 3 H. C. Deb. 5 s. 926.

<sup>5</sup> The Army Discipline and Regulation Act, 1879, re-enacted 1881, 44 & 45 Vict. c. 58. Cited as the Army Act, see 53 Vict. c. 4, s. 4.

<sup>6</sup> The discipline of the Royal Navy and the marine force, when afloat, is secured by permanent statutes. The discipline of the marines, when ashore, is maintained by the Army Act.

it is administered,<sup>1</sup> the enforcement of the existing army regulations<sup>2</sup> or on the conduct of troops in war<sup>3</sup> is out of order, while the details of the conduct of proceedings before military courts of inquiry and the prices paid for the billeting of troops must be discussed in committee on the bill and not on its second reading.<sup>4</sup> Amendments proposing to make the Army Act permanent<sup>5</sup> and to render unlawful the employment of troops in dealing with trade disputes<sup>6</sup> have been ruled out of order.

**Part III—  
THE  
HOUSE  
OF  
LORDS.**

Concurrence in supplies and taxation.

THE RESPONSIBILITY discharged by the Lords in the grant of supplies for the service of the Crown, and in the imposition of taxation, is concurrence, not initiation. Thus whilst the demand for supply made in the speech from the throne, on the opening of a session, is directed to the Commons, the speech is addressed to both houses of Parliament; and to the financial legislation which that demand creates, the Lords must be a consenting party.<sup>7</sup> Of their position in this respect the Lords have not been unmindful. When the Commons failed to provide for the appropriation of certain temporary supplies which they voted prior to the dissolution of 1820, caused by the death of George III. (see p. 451), the Lords, by a resolution, took notice that those supplies had not been duly brought before them by an appropriation bill.<sup>8</sup>

Messages from the Crown for pecuniary aid.

The Lords have taken exception, if a message from the Crown for pecuniary aid is sent exclusively to the Commons; and for upwards of a century it has been the custom to present such messages to both houses, if possible upon the same day,<sup>9</sup> addressing the demand for the grant to the Commons, and desiring the concurrence of the Lords by the message presented to their house, a procedure which maintains the constitutional relations of the two houses of Parliament in matters of supply.<sup>10</sup> The reply made by the Lords to the

<sup>1</sup> 61 H. C. Deb. 5 s. 891. For a similar ruling in committee, see 51 ib. 2027.

<sup>2</sup> 334 H. D. 3 s. 307; 47 Parl. Deb. 4 s. 1005.

<sup>3</sup> 92 Parl. Deb. 4 s. 1347.

<sup>4</sup> 120 Parl. Deb. 4 s. 854; 144 ib. 254.

<sup>5</sup> 24 H. C. Deb. 5 s. 884.

<sup>6</sup> 61 H. C. Deb. 5 s. 1069.

<sup>7</sup> The conditions under which certain legislation affecting the national finances can acquire the force of law without receiving the consent of the House of Lords have been described on p. 397.

<sup>8</sup> 53 L. J. 17, 41 H. D. 1 s. 1631-1635.

<sup>9</sup> 25th June, 1713, and 28th Feb. 1739, 2 Hatsell, 366, n. The message in regard to the provision for her Majesty Queen Adelaide, on the 14th April, 1831, was presented to the Commons alone, 86 C. J. 488.

<sup>10</sup> 73 L. J. 28, 96 C. J. 29 (Lord Keane); 88 L. J. 129, 111 C. J. 186 (Sir F. Williams); Lord Alcester and Lord Wolsley, 1883, &c. See also 72 Parl. Deb. 4 s. 319, 179 ib. 977.



message is an address to the Crown, declaring their willingness to concur in the measures which may be adopted by the other house.<sup>1</sup>

The Lords also express their opinion upon the public expenditure, the method of taxation, and of financial administration, both in debate and by resolution, and they investigate those matters by their select committees. Nor do the Commons, as formerly, attempt to exclude the Lords from inquiries of this nature by not transmitting to them reports and papers relating to taxation, or by declining to permit the attendance of a member to give evidence on this subject before a select committee of the Lords.<sup>2</sup>

The Commons, having during nearly three centuries claimed the right to include the members of the House of Lords in the taxation levied upon the subjects of the Crown (see p. 470) advanced this claim still further in 1671 by resolving, "That in all aids given to the king by the Commons, the rate or tax ought not to be altered by the Lords;" and, on the 3rd July, 1678, by a second resolution, "That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords."<sup>3</sup>

By the practice and usage based upon that resolution, the Lords are excluded, not only from the power of initiating<sup>4</sup> or amending bills dealing with public expenditure or revenue, but also from initiating public bills which would create a charge upon the people by the imposition of local and other rates, or which deal with the administration or employment of those charges. Bills which thus infringe the privileges of the Commons, when received from the Lords, are either laid aside or postponed for six months.<sup>5</sup> It follows,

<sup>1</sup> 63 L. J. 892.

<sup>2</sup> Poor Law (Ireland), 1846, 101 C. J. 238. 335; Parochial Assessment, 1850, 105 ib. 368. The report, 24th May, 1867, on metropolis local taxation, was communicated to the Lords, 122 C. J. 244. 256.

<sup>3</sup> 9 C. J. 235. 509.

<sup>4</sup> Nullum Tempus (Ireland) Act, 1876, Amendment Bill was withdrawn in the Lords, 20th July, 1893, because it affected the public revenues, 14 Parl. Deb. 4 s.

1439; 15 ib. 62.

<sup>5</sup> See special entry, 24th July, 1661, on laying aside the Westminster Paving Bill, 8 C. J. 311; 56 ib. 88; 86 ib. 905; 92 ib. 659; 101 ib. 724; 105 ib. 458; 112 ib. 404; 115 ib. 308. 361, 159 H. D. 3 s. 539; 144 C. J. 304. 316. The Commons formerly accepted bills from the Lords, creating charges, not directly imposed by the bill, but defrayable out of moneys to be provided by Parliament. This method of procedure was

Consideration of public expenditure, &c.

Origin of Lords' position.

Bills or amendments to bills which infringe the Commons' privileges.

accordingly, that the Lords may not amend the provisions in bills which they receive from the Commons dealing with the above-mentioned subjects,<sup>1</sup> so as to alter, whether by increase or reduction, the amount of a rate or charge, its duration, mode of assessment, levy, collection, appropriation or management ; <sup>2</sup> or the persons who pay, receive, manage, or control it ; <sup>3</sup> or the limits within which it is leviable. Other forms of amendment by the Lords have also been held to infringe the privileges of the Commons, such as the addition of a clause providing that payments into and out of the Consolidated Fund should be made under the same regulations as were applicable by law to other similar payments ; <sup>4</sup> of provisions for the payment of salaries to officers of the Court of Chancery out of the suitors' fund ; <sup>5</sup> and alterations in a clause prescribing the order in which charges on the revenues of a colony should be paid.<sup>6</sup> As has been already stated, the Speaker when occasion arises directs the attention of the House to a breach of its privileges in bills or amendments brought from the House of Lords.

Local  
loans  
legisla-  
tion.

The privilege claimed by the Commons has also been held to include legislation affecting the Local Loans Fund, a fund derived from local taxation, with the guarantee of the Consolidated Fund (see p. 465), created under the National Debt and Local Loans Act, 1887. For instance, the Land Purchase (Ireland) Bill, 1888, placed a limitation on the total amount to be advanced out of the Local Loans Fund to any one purchaser ; and when the bill was considered by the Lords, an amendment was proposed to restrict this limitation to " any application made after the passing of this Act : " but was withdrawn on an expression of opinion by the lord chancellors of England and of Ireland, that it was outside the competence of their house.<sup>7</sup>

Private  
bills.

On the same principle, two private bills were laid aside, because

terminated in deference to a statement made by the Speaker, 23rd Aug. 1860, 115 C. J. 500, 160 H. D. 3 s. 1629. 1734.

<sup>1</sup> Forfeited Estates (Ireland) Bill, 1700, 13 C. J. 318 ; 3 Hatsell, App. No. 12 ; 105 C. J. 491.

<sup>2</sup> See Speaker's rulings on Municipal Corporations (Ireland) Bill 1839, 50 H. D. 3 s. 3 ; Local Government (England and Wales) Bill, 1893, 21 Parl. Deb. 4 s. 686. See also debate in Lords on an amendment proposed to the Voluntary Schools Bill, 1897, 48 Parl. Deb. 4 s. 360.

<sup>3</sup> 101 C. J. 1234.

<sup>4</sup> 105 C. J. 483.

<sup>5</sup> Administration of Justice Bill, 1841 ; Master in Chancery Bill, 1847,—a clause to this effect was struck out on third reading in the Lords.

<sup>6</sup> Canada Government Bill, 1840 ; amendment withdrawn on third reading in the Lords.

<sup>7</sup> 331 H. D. 3 s. 1224. 1226. See also the Speaker's ruling that the alteration proposed in a Lords' amendment, in the appropriation of some of the charges to be levied under the Licensing Bill, was a breach of the Commons' privileges, 140 Parl. Deb. 4 s. 330.

the bills sent by the Lords to the Commons contained clauses imposing a stamp duty on memorials; <sup>1</sup> and second bills were brought in, in accordance with the practice mentioned on p. 645. Another private bill, brought from the Lords, containing privileged clauses, was, however, permitted to proceed, on an explanation from the Speaker that the promoters of the bill were not responsible for the irregularity, and that the clauses would be withdrawn.<sup>2</sup>

The Commons usually accept amendments by the Lords, which, though not strictly regular, do not materially infringe the privileges of the Commons if they are otherwise unobjectionable. In such cases they justify their action by an entry inserted in the journal, under direction from the Speaker, explaining the motives for their agreement, stating, for instance, that the amendments are verbal,<sup>3</sup> further the intention of the house,<sup>4</sup> carry out the intention of the Commons,<sup>5</sup> make the provisions of the bill uniform and consistent,<sup>6</sup> or in accordance with the practice of parliament,<sup>7</sup> supply an omission in the bill,<sup>8</sup> provide for laying a minute before both houses according to the usual practice,<sup>9</sup> prevent repetition in the bill,<sup>10</sup> are rendered necessary by Acts recently passed <sup>11</sup> or by a section of an Act having become obsolete,<sup>12</sup> make provision for special cases not previously contemplated by the Commons,<sup>13</sup> or that the amendment does not alter or otherwise affect any valuation or assessment of taxation,<sup>14</sup> or alter a duty imposed.<sup>15</sup> The Commons have also stated that they were willing to waive their privilege.<sup>16</sup>

Even when amendments by the Lords are an infringement of privilege, it is not the invariable practice of the Commons to assert their claim regarding amendments made to bills that they have sent to the Lords, dealing with the relief of the poor, or with municipal, county, and local rates and assessments; more especially when those amendments affect charges upon the people incidentally

Acceptance by the Commons of privilege amendments.

Indirectly touching privilege matters.

Infringing privilege with regard to local rates.

<sup>1</sup> The Provident Life Assurance Bill and the Imperial Life Assurance Bill, 1889, 144 C. J. 304. 316; see also Royal Dublin Society Bill, 1877, 132 ib. 299.

<sup>2</sup> 128 C. J. 194, 215 H. D. 3 s. 1675.

<sup>3</sup> 122 C. J. 426; 135 ib. 196. 369.

<sup>4</sup> 116 C. J. 205.

<sup>5</sup> 80 C. J. 631; 86 ib. 684; 120 ib. 449; 122 ib. 456; 126 ib. 139; 136 ib. 453; 145 ib. 570; 146 ib. 169. 491. 503; 158 ib. 424.

<sup>6</sup> 80 C. J. 579; 107 ib. 230; 112 ib. 389; 137 ib. 389; 151 ib. 383; 153 ib.

406; 158 ib. 419.

<sup>7</sup> 90 C. J. 375; 91 ib. 823.

<sup>8</sup> 112 C. J. 389; 145 ib. 575; 146 ib. 428; 149 ib. 393; 157 ib. 524; 164 ib. 538; 168 ib. 365.

<sup>9</sup> 167 C. J. 88.

<sup>10</sup> 149 C. J. 384.

<sup>11</sup> 92 C. J. 659; 123 ib. 345.

<sup>12</sup> 147 C. J. 404.

<sup>13</sup> 161 C. J. 408; 169 ib. 433, 171 ib. 259.

<sup>14</sup> 112 C. J. 418.

<sup>15</sup> 81 C. J. 388.

<sup>16</sup> 166 C. J. 427, 171 ib. 260.

only, and are made for the purpose of giving effect to the legislative intentions of the Commons.<sup>1</sup> The difficulty also of separating those amendments from other legislative provisions or amendments, to which there was no objection, has frequently prompted their acceptance by the Commons.<sup>2</sup> The Commons, in dealing with amendments by the Lords to bills for the administration of local and other rates and charges, which touched matters of privilege, have had regard to the principle that, if the Lords' amendments dealt with legislative and not fiscal objects, a rigid adherence on the part of the Commons to their privileges might exclude the Lords from the practical consideration of such bills. On an occasion of this nature, in the session of 1838, when the Commons had before them Lords' amendments, many of which dealt with privileged matters, Mr. Speaker Abercromby explained the course which in his judgment should be followed. Speaking as the authorized guardian of the privileges of the house, he remarked, after reference to a precedent which had occurred in the year 1834, that the bill affected "not only the proprietors of the land, but the great mass of the people of Ireland;" and that, "as the principle of rating was necessarily incidental to such a measure, he considered that, if the privileges of this house were strictly pressed in such a case, they would almost tend to prevent the House of Peers from taking such a measure into its consideration in a way that might be, on all grounds, advisable." Influenced by these considerations, as appears by the debates which took place on three occasions, in the years 1838, 1847, and 1849, with the expressed sanction, not only of Mr. Speaker Abercromby, but of Mr. Speaker Shaw Lefevre, the Commons waived the exercise of their privilege, and considered amendments made by the Lords, which, not only by the omission of provisions, but by distinct enactment, changed the area, and therefore the burthen, of local taxation, and imposed rates higher than the rates fixed by the House of Commons.<sup>3</sup> Although the

<sup>1</sup> Prisoners' Removal Bill, 1849; the Lords made the Bill perpetual, instead of being in force for three years. In the Industrial Schools Bill, 1861, the Lords struck out a limitation of the Act, and thereby extended the charge: the Commons agreed to the amendment.

<sup>2</sup> 92 C. J. 465; 93 ib. 744. 823, 44 H. D. 3 s. 575. 871; 102 C. J. 593. 594, 92 H. D. 3 s. 1299; 107 H. D. 3 s. 1039; 126 C. J. 139, &c.

<sup>3</sup> 44 H. D. 3 s. 575; 92 ib. 1299. 1306. 1341; 107 ib. 1039. See also the Speaker's rulings on Lords' Amendments to the Housing of the Working Classes and Local Government (Ireland) Bills, 87 Parl. Deb. 4 s. 808. 954. 956, Education (England and Wales) Bill, 166 Parl. Deb. 4 s. 1576, and in the case of the Development and Road Improvement Funds Bill, 13 H. C. Deb. 5 s. 400.

Commons disagreed to certain amendments, which proposed to apply loans drawn from the Consolidated Fund to objects other than those prescribed by the Commons, and to extend the time appointed for the application of the loans, their disagreement was not based on a claim of privilege.<sup>1</sup>

In like manner, although it is not competent for the Lords, by a private bill, to alter rates leviable under a public Act, the Speaker suggested that a Lords' amendment to that effect, and therefore an amendment which affected the privileges of the Commons, should be accepted, with a special entry upon the journal to justify and explain the course adopted by the house.<sup>2</sup>

When the Lords' amendments necessitate an assertion of the Commons' privileges, the disagreement is made on the ground of privilege; and in the message to the Lords from the Commons, communicating the reasons for their disagreement, the assertion of this claim usually takes the form of a statement that the amendments would interfere with the public revenue, or affect the levy and application of rates, or alter the area of taxation, or otherwise infringe the privileges of the house, and that the Commons consider that it is unnecessary on their part to offer any further reason, hoping that the reason given may be deemed sufficient.<sup>3</sup> This hint of privilege is generally accepted by the Lords, and the amendment is not insisted upon. On some occasions, however, when the Commons have rejected amendments on the ground of privilege, and have so stated in their reasons, the Lords have not insisted on the amendments but have asserted, by a resolution, that they made no admission in respect of any deduction which might be drawn from the reasons offered by the Commons, and did not consent that these reasons should thereafter be drawn into a precedent.<sup>4</sup>

If the Lords return a message to the Commons insisting upon a

Final disagreement

<sup>1</sup> Landed Property (Ireland) Bill, 102 C. J. 594, 606, 92 H. D. 3 s. 1299, 1340.

<sup>2</sup> Dublin Corporation Bill, 145 C. J. 575, 348 H. D. 3 s. 964.

<sup>3</sup> Naval Prize Balance Bill, 105 C. J. 491; Tramways (Ireland) Bill, 115 ib. 477; Juries Bill, 117 ib. 368; Peace Preservation (Ireland) Bill, 125 ib. 123; Intoxicating Liquors Licences Suspension Bill, 126 ib. 432, 208 H. D. 3 s. 1736; Erne Loch and River Bill, 136 C. J. 474; Elementary Education Bill, 146 ib. 507; Local Government (England and Wales)

Bill, 148 ib. 677; Local Government (Ireland) Bill, 153 ib. 408; Licensing Bill, 159 ib. 417; Labourers (Ireland) Bill, 161 ib. 401; Housing, Town Planning, &c., Bill, and Development and Road Improvement Funds Bill, 164 ib. 521, 543; Housing Bill, 169 ib. 440.

<sup>4</sup> Elementary Education Bill, 123 L. J. 425, 356 H. D. 3 s. 1221; Old Age Pensions Bill, 140 L. J. 345, 193 Parl. Deb. 4 s. 1077, 1911; Development and Road Improvement Funds Bill, 141 L. J. 455, 4 H. L. Deb. 5 s. 1374.

to Lords' amendments.

privilege amendment, the course adopted by the Commons is to order that the Lords' amendments be laid aside, or that the consideration of the amendments be deferred for six months.

Relaxation of Commons' privileges in regard to pecuniary penalties and fees.

S. O. 44, Appen- dix 1.

The claim to exclusive legislation over charges imposed upon the people was formerly extended by the Commons to the imposition of fees and pecuniary penalties, and to provisions which touched the mode of suing for fees and penalties,<sup>1</sup> and to their application when recovered; and they denied to the Lords the power of dealing with these matters. The rigid enforcement of this claim proved inconvenient; and in 1849, the Commons adopted a standing order, based on a resolution passed in 1831,<sup>2</sup> which gave the Lords power to deal, by bill or amendment, with pecuniary penalties, forfeitures, or fees, when the object of such penalties or forfeitures was to secure the execution of an Act; and when the fees imposed were not payable into the exchequer, or in aid of the public revenue. A similar power was conferred upon the Lords at the same time in the case of a

S. O. (Private Bills) No. 226.

private bill for a local or personal act. The Commons also agreed to another standing order, whereby they surrendered their privileges so far as they affected private and provisional order bills sent down from the House of Lords, which refer to tolls and charges for services performed, not being in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes.<sup>3</sup> The practical result of these standing orders is a waiver by the Commons of their privilege with respect to pecuniary penalties in public and in private bills.<sup>4</sup> Fees imposed in a public bill can be dealt with by the Lords provided they are not paid into the exchequer or applied in relief of the public revenue; whilst it is competent for the Lords by a private bill to impose fees and tolls for rendered services, and to authorize the levy of rates to be assessed and levied by local authorities for local purposes (see p. 627).

Avoidance of in-fringe-ment of privilege in Lords' bills.

By omis- sion of privilege

The following expedients have been adopted, when it is desirable that a bill containing provisions which deal with charges upon the people should be introduced into the House of Lords. In such a case, the bill is presented and printed, containing the necessary provisions for giving full effect to the intention of the bill, and is considered and discussed in the Lords in that form. On the third

<sup>1</sup> 8th March, 1692, 10 C. J. 845; 3 Hatsell, 126. 134.

<sup>2</sup> 86 C. J. 477; 104 ib. 557.

<sup>3</sup> 113 C. J. 348.

<sup>4</sup> Court of Chancery (Duchy of Lancaster) Bill, 1850; Burial Service Bill, 1864 (burial fees).

reading the provisions infringing the privileges of the Commons are struck out; and the bill, drawn so as to be intelligible after their omission, is sent to the Commons in that form. The bill is printed by the Commons containing the omitted provisions, formerly printed in red ink, but now marked by underlines and brackets, and with a note stating that these provisions are proposed to be inserted in committee. As these provisions form no part of the bill received from the House of Lords, no privilege is violated; whilst the bill before the Commons contains every provision necessary for giving it full effect; and in committee the privilege provisions, if approved of, are inserted.<sup>1</sup>

The same purpose is met occasionally by the form of drafting of the bill or the amendments. For instance, when the Lords, by an amendment, extended the Contagious Diseases Prevention Bill, 1846, to Scotland and Ireland, as the bill contained rating clauses, they inserted a clause providing that the rating power conferred by the bill should not be thereby extended. The Commons disagreed to this clause; the Lords did not insist thereon, and thus the whole bill was extended to Scotland and Ireland.<sup>2</sup> A bill to continue the Crime and Outrage (Ireland) Act, 1854, was introduced in the Lords, but as the Act contained sections which authorized charges upon the county cess and the Consolidated Fund, a clause was inserted which excepted those sections from the operation of the bill. This exception was disagreed to by the Commons, and thus the entire Act was continued.<sup>3</sup>

In the case of the Irish Land Law Bill, 1887, which was introduced in the Lords, since, under the Purchase of Land (Ireland) Act, 1885, and the National Debt and Local Loans Act, 1887 (see p. 510), advances to tenants are made out of moneys in the hands of the National Debt commissioners—funds with which the Lords cannot

<sup>1</sup> Good examples of this practice are afforded by the Burial Grounds Bill, in 1853; the Police (Scotland) Bill, in 1857; the Probates, &c., Act Amendment Bill, in 1858; the Cayman Islands Government Bill, in 1863; the British North America Bill, in 1867; the Supreme Court of Judicature Bill, in 1873; and the Rivers Conservancy Bill, in 1879. The Poor Relief Bill, a class of bill formerly not accepted by the Commons from the Lords, was, by the adoption of this method, received and considered by the Commons in 1868, 123 C. J. 262.

<sup>2</sup> 101 C. J. 1290. See also debate on

Lords' amendments to the Local Government (Ireland) Bill, 1898, and the Education Bill, 1902, 63 Parl. Deb. 4 s. 1029; 116 ib. 1383.

<sup>3</sup> The Commons, in the session of 1868, refused to strike out a formal provision introduced by the Lords into the West Indies Bill for the purpose of its omission by the Commons, to make way for the substitution of a clause whereby a charge of 2000*l.* a year might be retained upon the Consolidated Fund; and the provision consequently appears as sec. 2 of the Act 31 & 32 Vict. c. 120, 123 C. J. 371 (see also p. 463).

deal—the Lords inserted a subsection in the bill, providing that those advances should be made out of the Irish Church Fund surplus,—a fund which, by Act, had been placed at the disposal of Parliament—with a footnote stating that the subsection was inserted by the Lords to avoid a question of privilege, and suggesting its omission. This was done by the Commons; and the advances consequently came out of funds provided by the National Debt commissioners, as desired by the Lords.

In 1916 the Small Holding Colonies Bill, which was introduced in the House of Lords, contained clauses imposing charges upon the Small Holdings Account and the advances made to the Board of Agriculture out of the Development Fund. In deference to the Commons privileges, the clause in question was struck out of the bill before it left the Lords and a clause was inserted postponing the exercise of the powers of the Act until financial provision should be made by Parliament. The clause omitted by the Lords was inserted during the progress of the bill through the House of Commons and the original financial proposals of the bill were so restored.<sup>1</sup>

Bills from the Lords to which the Commons' privileges do not apply.

The claim to an exclusive right over financial legislation exerted by the Commons has not been extended to bills dealing with funds set apart for the purposes of general, but not public, utility. For instance, bills comprising charges upon the property and revenues of the Church or the Queen Anne's Bounty; <sup>2</sup> dealing with the property and land revenues of the Crown, the proceeds of which are not consigned by statute to the Consolidated Fund; <sup>3</sup> and bills applying to various purposes the fund created by the Irish Church Act, have been received from the Lords by the Commons, or amended by the Lords, without objection on the score of privilege.<sup>4</sup>

Rejection by the Lords of bills and provisions creating charges upon the people.

As the functions of the House of Lords in the grant or imposition of supply and taxation are reduced to a simple assent or negative, it becomes necessary to examine how far the power of dissent may be exercised without invading the privileges of the Commons. The legal right of the Lords, as a co-ordinate branch of the legislature, to withhold their assent from any bill whatever, to which their

<sup>1</sup> 148 L. J. 144, 171 C. J. 179, 22 H. L. Deb. 5 s. 375, 85 H. C. Deb. 5 s. 1554.

<sup>2</sup> Church Endowment Bill, 1843; Ecclesiastical Commissioners (England) Bill, 1843; Bishopric of Manchester Bill, 1847. It was ruled, privately, that a bill could not be received from the Lords affecting the revenue arising, under the

Church Temporalities (Ireland) Act, 1843, from a tax, rate, or assessment imposed upon all benefices.

<sup>3</sup> Waste Lands (Australia) Bill, 1846.

<sup>4</sup> Intermediate Education (Ireland) Bill (Lords), 133 C. J. 338; Arrears of Rent (Ireland) Bill, 137 ib. 451.



concurrence is desired, is unquestionable; and, in former times, their power of rejecting a bill for granting aids or supplies to the Crown had been expressly acknowledged by the Commons:<sup>1</sup> but, until the year 1860, though the Lords had rejected numerous bills concerning questions of public policy, in which taxation was incidentally involved, they had respected bills exclusively relating to matters of supply, and ways and means.

In 1860 the Commons determined to balance the year's ways and means by an increase of the property tax and stamp duties, and the repeal of the duties on paper. The increased taxation had already received the assent of Parliament, when the Lords rejected the Paper Duty Repeal Bill, and thus overruled the financial arrangements voted by the Commons. That house was naturally sensitive to this encroachment upon privileges: but the Lords had exercised a legal right, and their vote was irrevocable during that session. The Commons, therefore, to maintain their privileges, recorded upon their journal, 6th July, three resolutions as follows:—

Rejection  
of the  
Paper  
Duty Re-  
peal Bill,  
1860.

“That the right of granting aids and supplies to the Crown is in the Commons alone as an essential part of their constitution; and the limitation of all such grants as to matter, manner, measure, and time is only in them.

“That although the Lords have exercised the power of rejecting bills of several descriptions relating to Taxation by negating the whole, yet the exercise of that power by them has not been frequent and is justly regarded by this house with peculiar jealousy, as affecting the right of the Commons to grant the supplies, and to provide the ways and means for the service of the year.

“That to guard, for the future, against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over taxation and supply, this house has in its own hands the power so to impose and remit taxes, and to frame bills of supply, that the right of the Commons as to the matter, manner, measure, and time may be maintained inviolate.”<sup>2</sup>

In accordance with these resolutions, during the next session, the financial scheme of the year was presented to the Lords for acceptance or rejection, as a whole. The Commons again resolved that the paper duties should be repealed: but, instead of seeking the concurrence of the Lords to a separate bill for that purpose, they included in one bill the repeal of those duties with the property tax, the tea and sugar duties, and other ways and means for the service of the year; and this bill the Lords were constrained to accept.<sup>3</sup>

The budget of each year from that year until 1913 was comprised

Composite  
tax Acts.

<sup>1</sup> 3 Hatsell, 110–157; May, Const. Hist. i. 379; Report on Tax Bills, Parl. Pap. (H. C.) sess. 1860, No. 414.

<sup>2</sup> 115 C. J. 360, 150 H. D. 3 s. 1383.

<sup>3</sup> 102 H. D. 3 s. 594, 163 ib. 69, &c., 24 & 25 Vict. c. 20.

in a general or composite Act—a proceeding supported by precedent. In 1787, Mr. Pitt's entire budget was comprised in a single bill; and during many subsequent years great varieties of taxes were imposed and continued in the same Acts.<sup>1</sup>

Rejection  
of the  
Finance  
Bill, 1909.

In 1909 the Finance Bill which gave effect to the budget of the year was met on its second reading in the House of Lords by an amendment declaring "That this house is not justified in giving its consent to this bill, until it has been submitted to the judgment of the country."<sup>2</sup> The rejection of the bill by the Lords was condemned in the House of Commons by a resolution declaring "that the action of the House of Lords in refusing to pass into law the provision made by the House of Commons for the finances of the year is a breach of the constitution, and an usurpation of the privileges of the House of Commons."<sup>3</sup> A dissolution of Parliament followed, and in the new Parliament a Finance Bill to take the place of that rejected by the Lords (see p. 322) was passed by both houses.<sup>4</sup> The House of Commons also agreed to three resolutions in a committee of the whole house dealing with the relations between the two houses and the duration of Parliament, as follows:—

#### *Money Bills.*

"That it is expedient that the House of Lords be disabled by Law from rejecting or amending a Money Bill, but that any such limitation by Law shall not be taken to diminish or qualify the existing rights and privileges of the House of Commons.

"For the purpose of this Resolution a Bill shall be considered a Money Bill if, in the opinion of the Speaker, it contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; charges on the Consolidated Fund or the provision of money by Parliament; supply; the appropriation, control, or regulation of public money; the raising or guarantee of any loan or the repayment thereof; or matters incidental to those subjects or any of them."

#### *Bills other than Money Bills.*

"That it is expedient that the powers of the House of Lords, as respects Bills other than Money Bills, be restricted by Law, so that any such Bill which has passed the House of Commons in three successive Sessions and, having been sent up to the House of Lords at least one month before the end of the Session, has been rejected by that House in each of those Sessions, shall become Law without the consent of the House of Lords on the Royal Assent being declared: Provided that at least two years shall have elapsed between the date of the first

<sup>1</sup> 27 Geo. III. c. 13; 35 Geo. III. c. 1, &c.

<sup>3</sup> 164 C. J. 546, 13 H. C. Deb. 5 s. 546.

<sup>2</sup> 141 L. J. 453, May, Const. Hist. iii.

<sup>4</sup> 165 C. J. 140, 146.

introduction of the Bill in the House of Commons and the date on which it passes the House of Commons for the third time.

"For the purposes of this Resolution a Bill shall be treated as rejected by the House of Lords if it has not been passed by the House of Lords either without Amendment or with such Amendments only as may be agreed upon by both Houses."

*Duration of Parliament.*

"That it is expedient to limit the duration of Parliament to five years."

Upon these resolutions when agreed to by the house a bill was brought in but further progress was not made with it.<sup>1</sup> In the first session of the new Parliament which met in the following year the bill was again introduced, was passed by both houses, and received the royal assent as the Parliament Act, 1911.<sup>2</sup> The provisions of this Act have already been described (see p. 396); but it may be mentioned here that in order to bring the Finance Bill within the definition of a money bill under the Act the practice which had been in vogue since 1860 of including the whole financial scheme of the year in one bill has been modified on occasion. In each of the sessions 1913 and 1914 two bills, which were called the Finance Bill and the Revenue Bill respectively, instead of only one bill, were ordered to be brought in upon the resolutions of the committee of ways and means embodying the budget when they had been agreed to by the house.<sup>3</sup> In such cases care is taken to include in the Finance Bill only such provisions as are consistent with the definition of a money bill under the Parliament Act, 1911. This course may also be rendered necessary to secure the passage of the bill into law before the expiration of the period during which provisional sanction is given to the collection of certain taxes by the Provisional Collection of Taxes Act, 1913 (see p. 488).<sup>4</sup>

The right of the Lords to reject a bill for granting aids and supplies to the Crown has been held to include a right to omit provisions creating charges upon the people, when such provisions form a separate subject in a bill which the Lords are otherwise entitled to amend. The claim of privilege cannot, therefore, be raised by the Commons regarding amendments to such bills, whereby a whole clause, or series of clauses, has been omitted by the Lords, which, though relating to a charge, and not admitting of amendment,

Rejection  
by the  
Lords of  
provisions  
creating a  
charge.

<sup>1</sup> 165 C. J. 95.

<sup>2</sup> 166 C. J. 427. For the resolutions passed by the House of Lords and a description of the circumstances attending

the passing of the Act, see May, Const. Hist. iii. Chapter VIII.

<sup>3</sup> 168 C. J. 125; 169 ib. 215.

<sup>4</sup> 64 H. C. Deb. 5 s. 928.

yet concerned a subject separable from the general objects of the bill.<sup>1</sup> On the 30th July, 1867, it was very clearly put, by Earl Grey and Viscount Eversley, that the right of the Lords to omit a clause, which they were unable to amend, relating to a separate subject, was equivalent to their right to reject a bill which they could not amend without an infraction of the privileges of the Commons.<sup>2</sup>

Tacks to  
bills of  
supply.

In former times, the Commons abused their right to grant supplies without interference from the Lords, by tacking to supply bills provisions which, in a bill that the Lords had no right to amend, must either have been accepted by them unconsidered, or have caused the rejection of a measure necessary for the public service. This practice infringed the privileges of the Lords, no less than their interference in matters of supply infringes the privileges of the Commons; and has been met by the Lords by standing order No. 52, and by their resolution of the 9th December, 1702—

“That the annexing any clause or clauses to a bill of aid or supply, the matter of which is foreign to, and different from, the matter of the said bill of aid or supply, is unparliamentary, and tends to the destruction of the constitution of the government.”<sup>3</sup>

On no recent occasion have clauses been irregularly tacked to bills of supply: but, in 1807, acting on the above resolution, the Lords rejected a bill for abolishing fees in the Irish customs, and also the Malt Duties Bill “on account of its containing multifarious matter.”<sup>4</sup>

<sup>1</sup> Coroners Bill, 1844; District Lunatic Asylums (Ireland) Bill, 1846; Courts of Common Law Bill, 1853 (stamp duty in schedule); Turnpike Trusts Arrangements Bill, 1856 (clauses relating to insolvent trusts); Poor Relief (Ireland) Bill, 1860; Prisons (Scotland) Bill, 1861 (schedule). In this case the bill constituted prison boards, having taxing powers, and in the schedule appointed the numbers of each board, and the districts by which they were to be returned. The Lords desired to alter the constitution of the Edinburgh and Forfar boards, but being unable to make such amendments, they wholly omitted Edinburgh and Forfar from the schedule, and the Commons

made amendments which met the views of the Lords. Metropolis Local Management Act Amendment Bill, 1862 (clause altering qualification of vestrymen); Corrupt Practices at Elections Bill, 1863 (clause 11, charging costs of commissions upon local rates); Drainage (Ireland) Bill 1863, Part I., omitted, which comprised many provisions which the Lords could not have amended; Inclosure (No. 2) Bill, 1867, in which the Lords omitted Elsdon, Rochester, Northumberland.

<sup>2</sup> Parliamentary Representation Bill (clause 7), 189 H. D. 3 s. 415. 417.

<sup>3</sup> 17 L. J. 185.

<sup>4</sup> 46 L. J. 342, 62 C. J. 61, 8 H. D. 1 s. 427.

## CHAPTER XIX.

## WITNESSES AND PARLIAMENT.

WITNESSES summoned to give evidence before the House of Lords or any committee of the whole house are ordered to attend at the bar on a certain day, to be sworn; and they are served with the order of the house signed by the Clerk of the Parliaments. If a witness be in the custody of a keeper of a prison, the keeper is ordered to bring him up in custody, in the same manner.<sup>1</sup> If the house have reason to believe that a witness is purposely keeping out of the way to avoid being served with the order, it has been usual to direct that the service of the order at his house shall be deemed good service.<sup>2</sup> If, after such service of the order, the witness should not attend, he is ordered to be taken into custody: <sup>3</sup> but the execution of this order is sometimes stayed for a certain time.<sup>4</sup> If the officers of the house do not succeed in taking the witness into custody by virtue of this order, the last step taken is to address the Crown to issue a proclamation, with a reward for his apprehension.<sup>5</sup>

When the evidence of peers, peeresses or lords of Parliament has been required, the lord chancellor has been ordered to write letters to them, desiring their attendance to be examined as witnesses: <sup>6</sup> but they ordinarily attend and give evidence without any such form.

When the attendance of a witness is desired, to be examined at the bar, by the House of Commons, or by a committee of the whole house, he is simply ordered to attend at a stated time; <sup>7</sup> and the order, signed by the Clerk of the house, is served upon him personally, if he is in or near London; but if he is at a distance, it is forwarded to him by the Serjeant-at-arms, either by post, or, in special cases, by a messenger. If the witness does not obey the order for his attendance he may be ordered to be sent for in custody

<sup>1</sup> 68 L. J. 513. 558.<sup>2</sup> 66 L. J. 295. 358.<sup>3</sup> 66 L. J. 400.<sup>4</sup> 66 L. J. 358.<sup>5</sup> 66 L. J. 441. 442.<sup>6</sup> 66 L. J. 144.<sup>7</sup> 78 C. J. 240; 91 ib. 338.

Summons  
of wit-  
nesses by  
the Lords.

Peers, as  
witnesses,  
before the  
Lords.

Summons  
of wit-  
nesses by  
the Com-  
mons.

of the Serjeant-at-arms, and Mr. Speaker may be ordered to issue his warrant accordingly ; <sup>1</sup> or he may be declared guilty of a breach of privilege, and ordered to be taken into the custody of the Serjeant.<sup>2</sup> Any person, also, who aids or abets a witness in keeping out of the way, is liable to a similar punishment. When the Serjeant has succeeded in apprehending such persons, they have generally been sent to Newgate for their offence.<sup>3</sup>

If a witness whose attendance is desired by the house or by a select committee should be in the custody of the keeper of any prison or sheriff,<sup>4</sup> the Speaker is ordered to issue his warrant, which is personally served upon the keeper or sheriff by a messenger of the house, and by which he is directed to bring the witness in his custody to be examined.

If a witness should be in custody, by order of the other house, his attendance is secured by a message, desiring that he may attend in the custody of the Black Rod or the Serjeant-at-arms, as the case may be, to be examined.<sup>5</sup>

By select  
commit-  
tees.

The attendance of a witness to be examined before a select committee is ordinarily secured by an order signed by the chairman by direction of the committee : but if any person should neglect to appear when summoned in this manner, his conduct is reported to the house and an order is made for his attendance at the bar of the house.<sup>6</sup> If, in the mean time, he should appear before the committee, it is usual to discharge the order for his attendance at the bar.<sup>7</sup>

Witnesses  
abscond-  
ing.

When witnesses have absconded, and cannot be taken into custody by the Serjeant-at-arms, addresses have been presented to the Crown for the issue of proclamations with rewards for their apprehension <sup>8</sup> (see p. 468).

Attend-  
ance of  
members,  
how  
secured.

If the evidence of a member be desired by the house, or a committee of the whole house, he is ordered to attend in his place on a certain day.<sup>9</sup> But when the attendance of a member as a witness is required before a select committee, the chairman sends to him a written request for his attendance. Pursuant to the resolution of the 16th March, 1688, " if a member of the house should refuse, upon

<sup>1</sup> 95 C. J. 58.

<sup>2</sup> 106 C. J. 48, &c.

<sup>3</sup> 90 C. J. 330. 343. 344.

<sup>4</sup> 10 C. J. 476 ; 82 ib. 464 ; 86 ib. 795 ; 93 ib. 210. 353 ; 96 ib. 193 ; 97 ib. 227 ; 99 ib. 89 ; 126 ib. 228 ; 157 ib. 318.

<sup>5</sup> 11 C. J. 296. 305 ; 15 ib. 376 ; 19 ib. 461. 462 ; 21 ib. 356. 926.

<sup>6</sup> A witness who has been reported to the house for his failure to attend a select committee has been ordered by the house to attend the committee, 120 C. J. 180.

<sup>7</sup> 91 C. J. 352.

<sup>8</sup> 75 C. J. 419 ; 82 ib. 345, &c.

<sup>9</sup> 61 C. J. 386 ; 64 ib. 17 ; 65 ib. 21. 30, &c.

being sent to, to come to give evidence or information as a witness to a committee, the committee ought to acquaint the house *therewith*, and not summon such member to attend the committee." <sup>1</sup>

There has been no instance of a member persisting in a refusal to give evidence: but members have been ordered by the house to attend select committees.<sup>2</sup> In 1731, Sir Archibald Grant, a member, was committed to the custody of the Serjeant-at-arms, "in order to his forthcoming to abide the orders of the house," and was afterwards ordered to be brought before a committee, from time to time, in the custody of the Serjeant.<sup>3</sup> On the 28th June, 1842, a committee reported that a member had declined complying with their request for his attendance. A motion was made for ordering him to attend the committee, and give evidence: but the member having at last expressed his willingness to attend, the motion was withdrawn.<sup>4</sup>

If the attendance of a peer should be desired, to give evidence before the house, or any committee of the House of Commons,<sup>5</sup> the house sends a message to the Lords, to request their lordships to give leave to the peer in question to attend as a witness before the house or committee, as the case may be. If the peer should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, if he think fit. If not present, a message is returned on a future day, when the peer has, in his place, consented to go. Exactly the same form is observed by the Lords, when they desire the attendance of a member of the House of Commons. The attendance of a member to be examined, when the Lords are sitting on the trial of an impeachment is secured by means of a message: <sup>6</sup> but if the Lords be sitting as a court of criminal judicature on the trial of a peer, they order the attendance of a member of the House of Commons without a message.<sup>7</sup> Whenever the attendance of a member of the other house is desired by a committee, it is advisable to give him private intimation, and to learn that he is willing to attend, before a formal message is sent to request his attendance. But these formalities, though occasionally adopted,<sup>8</sup> are not usual or necessary in the case of private

<sup>1</sup> 10 C. J. 51.

<sup>2</sup> 19 C. J. 403.

<sup>3</sup> 21 C. J. 851. 852.

<sup>4</sup> 97 C. J. 438. 453. 458; see also Report of Precedents, ib. 449; Parl. Pap. (H. C.) sess. 1842, No. 392.

<sup>5</sup> 82 C. J. 394; 88 ib. 173. 179.

<sup>6</sup> 12 L. J. 84; 16 ib. 33. 747.

<sup>7</sup> 3 Hatsell, 21, n.

<sup>8</sup> Liverpool Docks Bill (Lord Harrowby), 103 C. J. 438; Salford Borough Bill, 108 ib. 434; Thames Embankment Approaches Bill, 1873 (Duke of Northumberland), 128 ib. 178. In this case the

bills, where the attendance of members of either house as witnesses is voluntary.<sup>1</sup> If a member should be in custody when leave is given him to attend the House of Lords, the Serjeant-at-arms is ordered to permit him to attend, in his custody.<sup>2</sup>

Officers of  
either  
house.

The same ceremony is maintained between the two houses in requesting the attendance of officers connected with their respective establishments: but when leave is given them to attend (see p. 527), the words "if they think fit," which are used in the case of members, are omitted in the answer.<sup>3</sup>

Peers, not  
being  
lords of  
Parliament.

Whether a peer, who is not a lord of Parliament, may be ordered to attend in the same form as a commoner, is a matter upon which the two houses have not agreed, as although the Commons have ordered such peers to attend,<sup>4</sup> the Lords, in the case of Lord Teignmouth, who had attended as a witness in obedience to an order of the House of Commons,<sup>5</sup> maintained the privilege of peerage as apart from the privilege of Parliament, by a resolution to that effect, which, however, was not communicated to the Commons.<sup>6</sup>

Peers  
under  
accusa-  
tion.

In 1805, the Commons having sent a message to the Lords, desiring the attendance of Viscount Melville, to be examined before the committee of Naval Inquiry, the Lords acquainted them, at a conference, that the course adopted by the Lords "has been to permit their members, on their own request, to defend themselves in the House of Commons on points on which the Commons have not previously passed criminating resolutions against them, and to give evidence before the house, or any committee thereof, on those points only on which no matter of accusation is depending against them;" and within these limitations they gave leave to Lord Melville to attend, though the Commons did not think fit to examine him.<sup>7</sup>

attendance of the duke was desired by the committee itself, and not by the parties. South Eastern and London, Chatham and Dover Railways Bill, 1909, 164 ib. 299.

<sup>1</sup> 3 Hatsell, 21, n.

<sup>2</sup> 11 C. J. 296, 305; 15 ib. 376; (Mr. W. S. O'Brien), 101 ib. 603.

<sup>3</sup> 103 C. J. 658; 112 ib. 61; 113 ib. 255.

<sup>4</sup> 3rd May, 1779, Earl of Balcarras, 37 C. J. 366.

<sup>5</sup> 61 C. J. 374.

<sup>6</sup> 45 L. J. 812; see 2 Hatsell, App. 9; Colchester, ii. 69, 73. 1st June, 1825, "The chancellor, by Mr. Cowper's advice, thought it necessary to have leave given

by the house for the Archbishop of Dublin's attendance before the Commons' committee, although, not being on the rota, he has no seat in the House of Peers, or duty to discharge there," Colchester, iii. 394.

<sup>7</sup> 60 C. J. 265, 272; Colchester, i. 558; and see 4 Hatsell, 485. By standing order No. 64, "No lord shall either go down to the House of Commons, or send his answer in writing, or appear by counsel, to answer any accusation there, upon penalty of being committed to the Black Rod, or to the Tower, during the pleasure of this house."



Before any such message is sent to the other house, or any witness is otherwise summoned, it is right that the house should previously have directed an inquiry into the matter upon which evidence is sought.<sup>1</sup> Inquiry to be previously ordered.

These being the various modes of securing the attendance of witnesses to give evidence before either house of Parliament, the mode of examination is next to be considered. Mode of examination. Lords of Parliament, and peers not being lords of Parliament, and peeresses, are sworn at the table of the house, by the lord chancellor; <sup>Lords.</sup> <sup>2</sup> and other witnesses who are to be examined by the house, or by a committee of the whole house, are sworn at the bar. An Irish peer, being a member of the House of Commons, is sworn at the bar, as a commoner.<sup>3</sup> The Lords formerly claimed the privilege of being examined upon honour, instead of upon oath.<sup>4</sup> But this supposed privilege has long since been abandoned, and peers are everywhere examined upon oath, even in the House of Lords itself. If counsel be engaged in an inquiry at the bar, the witnesses are examined by them, and by any lord who may desire to put questions. When counsel are not engaged, the witnesses are examined by the Lords generally. A lord of Parliament is examined in his place; and peers not being lords of Parliament, and peeresses, have chairs placed for them at the table.<sup>5</sup>

Formerly, every witness about to be examined before a select committee, was required to attend previously at the bar to be sworn; but since 1858, by the Parliamentary Witnesses Act, 1858 (21 & 22 Vict. c. 78), any committee of the House of Lords may administer an oath to the witnesses before such committee. Oaths administered by Lords' committee. In accordance with the resolution, 11th June, 1857, "that select committees, in future, shall examine witnesses without their having been previously sworn, except in cases in which it may be otherwise ordered by the house,"<sup>6</sup> witnesses have only been sworn upon inquiries of a special character.

<sup>1</sup> On the 31st March, 1813, a motion being made for a message to the Lords for the attendance of Lord Moira to give information concerning the Princess of Wales, the Speaker desired the attention of the house to the proceeding as novel and unparliamentary; "the rule being, according to all precedents, not to desire the attendance of witnesses of any sort, excepting upon a matter pending in the house, and which the house had previously resolved to examine." The motion was superseded by reading the order of the

day, 68 C. J. 364; Colchester, ii. 434.

<sup>2</sup> 38 L. J. 68. 69; 77 ib. 725; 87 ib. 213.

<sup>3</sup> Viscount Palmerston, 16th July, 1844.

<sup>4</sup> 14 L. J. 18; 24 ib. 136.

<sup>5</sup> 25 L. J. 303; see also ib. 100; 38 ib. 69; 46 ib. 172. 189, where the judges of the Court of Justiciary in Scotland had chairs set for them at the bar, to be examined.

<sup>6</sup> 89 L. J. 60; Report on Oaths of Witnesses, 89 L. J. 39.

Places of  
witnesses.

In select committees of the Lords, witnesses are placed in a witness-box or at the shorthand writer's table, to be examined : but members of the House of Commons are allowed a seat near the table, where they sit uncovered.

False  
evidence.

Besides the infliction of punishment for perjury, false evidence before the Lords, prevarication, or other misconduct of a witness, is punishable as a contempt.<sup>1</sup>

Adminis-  
tration of  
oaths by  
Commons'  
com-  
mittees.

The Commons, except during the Commonwealth,<sup>2</sup> never asserted the right of administering an oath ; though during the seventeenth century they were evidently alive to the importance of such a power, and resorted to various expedients in order to supply the defect in their own authority.<sup>3</sup> 1. They selected some of their own members who were justices of the peace for Middlesex, to administer oaths in their magisterial capacity.<sup>4</sup> 2. They sent witnesses to be examined by one of the judges.<sup>5</sup> 3. They sought to aid their own inquiries by having their witnesses sworn at the bar of the House of Lords<sup>6</sup> : and by examining witnesses on oath before joint committees of both houses ;<sup>7</sup> in neither of which expedients were they supported by the Lords. The Commons also assumed a right of delegating to others a power which they did not possess. On the 27th January, 1715, they empowered justices of the peace for Middlesex to examine witnesses in the most solemn manner before a committee of secrecy ; and the same practice was resorted to in other cases. Between this time and 1757, several similar instances occurred :<sup>8</sup> but from that year the most important inquiries were conducted without any attempt to revive so anomalous and questionable a practice. At length, in 1871, in pursuance of the recommendations of a select committee of 1869, the Parliamentary Witnesses Oaths Act, 1871 (34 & 35 Vict. c. 83), was passed, empowering the House of Commons and its committees to administer oaths to witnesses, and attaching to false evidence the penalties of perjury. By standing orders Nos. 86 and 87, oaths and affirmations, under the Oaths Act, 1888 (see p. 150), are administered to witnesses, before the house or a committee of the whole house, by a clerk at the table ; and before a select

S. O. 86.  
87, Ap-  
pendix 1.

<sup>1</sup> 48 L. J. 371, &c.

<sup>2</sup> See 6 C. J. 214. 451 ; 7 ib. 55. 287. 484, &c. ; see also 2 ib. 455, and the author's evidence before the committee on Witnesses (House of Commons), in 1869.

<sup>3</sup> 2 Hatsell, 151 *et seq.*

<sup>4</sup> 9 C. J. 521 ; 10 ib. 682.

<sup>5</sup> 10 C. J. 415. 417.

<sup>6</sup> 8 C. J. 325. 327.

<sup>7</sup> 2 C. J. 502 ; 8 ib. 647. 655.

<sup>8</sup> 18 C. J. 353. 596 ; 19 ib. 301. The committee on the South Sea Company, 1721, 19 ib. 403 ; 21 ib. 851. 852 ; 2 Hatsell, 151-157.

committee, by the chairman, or by the clerk attending the committee. It is not usual, however, for select committees to examine witnesses upon oath, except upon inquiries of a judicial or other special character.<sup>1</sup>

Those who withhold or give false evidence are treated as being guilty of a breach of privilege (see p. 76). Contumacious witnesses. Protection to witnesses.

While the house punishes misconduct with severity, it is careful to protect witnesses from the consequences of their evidence given by order of the house (see p. 120); and on extraordinary occasions, where further protection has been deemed necessary to elicit full disclosures, Acts have been passed to indemnify witnesses from all the penal consequences of their testimony.<sup>2</sup>

The practice of the house regarding evidence sought for outside the walls of Parliament touching proceedings that have occurred therein is regulated by the resolution of session 1818, which directs that no clerk or officer of the house, or shorthand writer employed to take minutes of evidence before this house, or any committee thereof, shall give evidence elsewhere, in respect of any proceedings or examination had at the bar, or before any committee of the house, without the special leave of the house.<sup>3</sup> Accordingly parties to a suit who desire to produce such evidence, or any other document in the custody of officers of the house, in a court of law, petition the house, praying that the proper officer may attend, and produce it; and the term "proper officer" includes an official shorthand writer (see p. 184). The motion for leave may be moved without previous notice (see p. 219).<sup>4</sup> During the recess, however, it has been the practice for the Speaker, in order to prevent delays in the administration of justice, to allow the production of minutes of evidence and other documents, on the application of the parties to a private suit. Evidence of clerks and officers of the house.

<sup>1</sup> The committee on Foreign Loans in 1875 was the first to examine witnesses upon oath under the Act; they were also so examined by the committees on Privilege (Tower High Level Bridge) and Mr. Goffin's certificate, 1879; Contagious Diseases Acts, 1882, &c. By an instruction, the committee on London Corporation (Charges of Malversation), 1887, was directed to take evidence on oath, 142 C. J. 97.

<sup>2</sup> Election Compromises, 1842, 5 & 6 Vict. c. 31; Sudbury Disfranchisement, 1843, 6 & 7 Vict. c. 11; Gaming Trans-

actions, 1844, 7 & 8 Vict. c. 7.

<sup>3</sup> 73 C. J. 389. Under sect. 24 of the Parliamentary Elections Act, 1868, the shorthand writer of the House of Commons shall attend to take notes of the evidence before the election judge. An order of the house is not required to enable the shorthand writer who has attended a trial of an election petition to give evidence thereon elsewhere, as the trial is not a proceeding of the house (private ruling, 7th Feb. 1873).

<sup>4</sup> 106 C. J. 212, 277; 107 ib. 291, &c.

But should the suit involve any question of privilege, especially the privilege of a witness, or should the production of the document appear, on other grounds, to be a subject for the discretion of the house itself, he will decline to grant the required authority. During a dissolution the Clerk of the house sanctions the production of documents, following the principle adopted by the Speaker.

Evidence  
of mem-  
bers as to  
proceed-  
ings in  
Parlia-  
ment.

It has been held by the courts, that the evidence of members of proceedings in the House of Commons is not to be received without the permission of the house, unless they desire to give it; <sup>1</sup> and, according to the usage of Parliament, no member is at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament, except by leave of the house of which he is a member.<sup>2</sup>

Examina-  
tion of  
witnesses  
at the bar.

When a witness is examined by the House of Commons, or by a committee of the whole house,<sup>3</sup> he attends at the bar, which is then kept down. If the witness be not in custody, the mace remains upon the table; when, according to the strict rule of the house, the Speaker should put all the questions to the witness, and members should only suggest to him the questions which they desire to be put: <sup>4</sup> but, for the sake of avoiding the repetition of each question, members are usually permitted to address their questions directly to the witness, which, however, are still supposed to be put through the Speaker.<sup>5</sup> When a witness is in the custody of the Serjeant-at-arms, or is brought from any prison in custody, it is the usual, but not the constant, practice for the Serjeant to stand with the mace at the bar. When the mace is on the Serjeant's shoulder, the Speaker has the sole management; and no member may speak, or even suggest questions to the chair.<sup>6</sup> In such cases, therefore, the questions to be proposed should either be put in writing, by individual members, or settled upon motions in the house, and given to Mr. Speaker before the prisoner is brought to the bar.<sup>7</sup> If a question be objected to, or if any difference should arise in regard to the examination of a witness, he is directed by the Speaker to withdraw, before a motion is made or the matter is considered. In committee of the whole house, any member may put questions directly to the witness. Where counsel are engaged, the examination of witnesses is mainly conducted by them, subject to the interposition of questions

<sup>1</sup> Chubb v. Salomons, 3 Car. & Kir. 75.

<sup>2</sup> 18 H. D. 2 s. 968-974.

<sup>3</sup> 2 Hatsell, 140; but see 2 C. J. 26.

<sup>4</sup> 1 C. J. 536.

<sup>5</sup> 146 H. D. 3 s. 97; 150 ib. 1063.

<sup>6</sup> 2 Hatsell, 141, n.

<sup>7</sup> 2 Hatsell, 142.

by members ; and where any question arises in regard to the examination, the parties, counsel and witnesses are directed to withdraw.

Members of the house are always examined in their places ; <sup>1</sup> and <sup>Members, lords of Parlia- ment, &c.</sup> peers, lords of Parliament, the judges, and the lord mayor of London, have chairs placed for them within the bar, and are introduced by the Serjeant-at-arms.<sup>2</sup> Peers sit down covered but rise and answer all questions uncovered. The judges and the lord mayor are told by the Speaker that there are chairs to repose themselves upon ; which is understood, however, to signify that they may only rest with their hands upon the chair backs.<sup>3</sup>

When a peer is examined before a select committee, it is the practice to offer him a chair at the table, next to the chairman ; where he may sit and answer his questions covered.

When a witness is summoned at the instance of a party, his expenses <sup>Expenses of wit- nesses.</sup> are defrayed by such party : but when summoned for any public inquiry, to be examined by the house or a committee, his expenses are paid by the paymaster-general, under orders signed by the Clerk of the Parliaments, or the Clerk of the House of Commons, or by the chairman in the case of a select committee in either house. No witness residing in or near London is allowed any expenses, unless he has rendered special services to the committee.<sup>4</sup> Every witness should report himself to the committee clerk on his arrival in London, or he will not be allowed his expenses for residence prior to the day of making such report. Full particulars regarding the payments to witnesses must be annexed to the report of the select committee before whom the witnesses gave evidence.<sup>5</sup>

<sup>1</sup> " Agreed that members ought not to be brought to the bar unless they are accused of any crime," 10 C. J. 46. On the 12th Jan. 1768, Wilkes being brought to the bar in custody, objected that he could not appear there without having taken the oaths ; but his objection was overruled.

<sup>2</sup> The same forms are observed when a peer desires to address the house, as in the case of Viscount Melville, 11th June, 1805, 5 H. D. 1 s. 250 ; and Duke of Wellington, 1st July, 1814, 28 ib. 489 ; Abbot's Speeches, 84 ; Colchester, ii. 6-8.

<sup>3</sup> 2 Hatsell, 148, where all these forms are minutely described.

<sup>4</sup> Parl. Pap. (H. C.) sess. 1840, No. 555. Artisans, mechanics and other persons of the poorer classes residing in or near

London, have been paid, however, the equivalent of the wages or earnings necessarily lost by them by their attendance as witnesses, see report of select committee on Government Contracts (Fair Wages Resolution), Parl. Pap. (H. C.) sess. 1897, No. 93, p. xxv.

<sup>5</sup> A witness is allowed his actual travelling expenses, and for every day or part of a day that he is necessarily kept from home, at the following rates, viz. a barrister, physician, civil engineer, or architect, 3*l.* 3*s.* ; a solicitor, surgeon, or land surveyor, 2*l.* 2*s.* ; a clergyman, or non-professional gentleman, 1*l.* 1*s.* ; a mechanic, &c., 10*s.* Special allowances have also been made to defray the expenses of official substitutes.

The Lords have appointed a select committee to inquire into the expenses that should be allowed to witnesses, and have received their report in detail, before the items were agreed to.<sup>1</sup>

In 1873, the East India Finance committee resolved that the expenses of witnesses coming from India (not exceeding 10,000*l.*) should be paid out of the revenue of the United Kingdom.<sup>2</sup>

Upon a special report from the select committee on the Army and Navy Estimates, and with the sanction of the royal recommendation, a grant was made to provide for the remuneration of accountants who might be employed on behalf of the committee to examine and audit the expense accounts of the army and navy manufacturing departments.<sup>3</sup>

<sup>1</sup> 62 L. J. 910.

<sup>2</sup> Parl. Pap. (H. C.) sess. 1873, No. 194. The treasury declined to act on this resolution; see Mr. Law's letter, appendix to Report, p. 9. The treasury sanctioned, sess. 1891, on application from the committee on British and Foreign Spirits, a payment of 105*l.* to two witnesses for

work done for the committee, and in sess. 1902 special allowances for experiments in connection with the ventilation of the Houses of Commons for the select committee on that subject, Parl. Pap. (H. C.) sess. 1903, No. 227, p. vii.

<sup>3</sup> Parl. Pap. (H. C.) sess. 1887, No. 239; 142 C. J. 162. 271. 407; 143 ib. 95. 96.

## CHAPTER XX.

### COMMUNICATIONS BETWEEN THE LORDS AND THE COMMONS.

THE two houses of Parliament have frequent occasion to communicate with each other, not only in regard to bills which require the assent of both houses, but with reference to other matters connected with the proceedings of Parliament. These are the modes of communication:—by message;—by conference;—by joint committees; and—by select committees of both houses communicating with each other (see p. 445). Communication by message and by conference are considered in this chapter.

Different modes of communication between Lords and Commons.

A message is the most simple and frequent mode of communication; it is daily resorted to, for sending bills from one house to another; for requesting the attendance of witnesses; for the interchange of reports and other documents; and for communicating all matters of an ordinary description, which occur in the course of parliamentary proceedings.

Messages.

An important change in the form of sending messages was introduced in 1855: but as the former practice is still recognized by the orders of both houses, it may be convenient to describe it. Prior to 1847, the Lords sent messages by the masters in chancery, their attendants, or, on special occasions, by their assistants, the judges,<sup>1</sup> and until 1855 the Commons sent messages to the Lords by one of their own members (generally the chairman of the committee of ways and means, or a member who had charge of a bill), who was generally accompanied by thirty or forty members.<sup>2</sup>

Former method of sending messages.

Inconvenience was caused by observance of these usages; and in 1855, the present method of communication between the two houses was adopted. On the 24th May, 1855, resolutions, which had been communicated by the Lords at a conference, were agreed

Present method.

<sup>1</sup> Messages touching bills relating to the Crown or royal family were formerly sent to the Commons by two judges, 80 C. J. 573; 86 ib. 514. 805. The last occasion when the Lords observed this custom

took place in the year 1871, Princess Louise's Annuity Bill, 126 ib. 57.

<sup>2</sup> D'Ewes, 447; Order and Course of Passing Bills in Parliament, 4to, 1641.

to by the Commons, whereby it was arranged that one of the clerks of either house might be the bearer of messages from the one to the other ; and that the reception of the messages should not, of necessity, interrupt the business then proceeding.<sup>1</sup> Messages accordingly, as a rule, occasion no interruption, though the business of the house that is in course of transaction when a message is received, is occasionally interrupted.<sup>2</sup>

Lords' messages communicated forthwith.

When the necessity arises, the Speaker informs the House between the Orders of the Day of the receipt of a message from the Lords, whereupon motions are made, and questions put from the chair which arise upon its communication (see p. 387).

Conferences.

A conference, whereby both houses are brought into direct intercourse with each other, by deputations of their own members, is the most formal and ceremonious method of communicating important matters by one house of Parliament to the other.

Subjects for a conference.

Either house may demand a conference upon matters which, by the usage of Parliament, are allowed to be proper occasions for such a proceeding ; as, for example : (1) To communicate resolutions or addresses to which the concurrence of the other house is desired.<sup>3</sup> (2) Concerning the privileges of Parliament.<sup>4</sup> (3) In relation to the course of proceeding in Parliament.<sup>5</sup> (4) To require or communicate statements of facts on which bills have been passed by the other house.<sup>6</sup> (5) To offer reasons for disagreeing to or insisting on amendments made by one house to bills passed by the other. On all these and other similar matters, it is regular to demand a conference : but as the object of communications of this nature is to maintain a good understanding between the houses, it is not proper for one house to use them for interfering with and anticipating the proceedings of the other, before the fitting time. Thus, while a bill or other matter is pending in the other house, it is irregular to demand a conference concerning it.<sup>7</sup>

Purpose to be stated.

In demanding a conference, the purpose for which it is desired should be explained, lest it should be on a subject not fitting for a conference.<sup>8</sup> The causes of demanding a conference need not, however, be stated with minute distinctness. It is sufficient to specify

<sup>1</sup> 110 C. J. 254.

<sup>2</sup> 126 C. J. 57.

<sup>3</sup> 87 C. J. 421 ; 88 ib. 488 ; 89 ib. 232 ; 95 ib. 422 ; 112 ib. 363, &c.

<sup>4</sup> 9 C. J. 344.

<sup>5</sup> 89 C. J. 220 ; 90 ib. 656 ; 91 ib. 225 ;

102 ib. 861.

<sup>6</sup> 19 C. J. 630.

<sup>7</sup> See resolution, 1 C. J. 114.

<sup>8</sup> 2nd Aug. 1641, 2 C. J. 581 ; 22nd March, 1678, 9 ib. 555 ; see also 51 ib. 5 ; 32 Parl. Hist. 188 ; 4 Hatsell, 23.



that they were upon matters of high importance "respecting the due administration of justice;" "to the prosperity of the British possessions in India;" or "essential to the stability of the empire, and to the peace, security, and happiness of all classes of his Majesty's subjects."<sup>1</sup>

Conferences were formerly demanded, in order to offer reasons for disagreeing to amendments to bills, but by resolutions of both houses, agreed to at conferences in 1851, messages between the two houses have been substituted for conferences, unless a conference is preferred.<sup>2</sup> Since these resolutions were agreed to, there has been only one instance of a conference where a message would have been admissible.<sup>3</sup>

Reasons for disagreeing to amendments to bills offered by message or conference.

It is the privilege of the Lords to name both the time and place of meeting, whether the conference be desired by themselves or by the Commons.<sup>4</sup> The agreement of both houses to a conference is communicated by message.

Time and place of meeting of conference.

Each house appoints managers to represent it at the conference, and, by "ancient rule," the number of the Commons named for a conference is double that of the Lords.<sup>5</sup> It is not, however, usual according to later practice to specify the number of the managers for either house. The managers of the house which desires the conference are the members of the committee who draw up the reasons, to whom others may be added; and the managers of the other house are selected from the members who have taken an active part regarding the bill, if present; or other members may be named, who happen to be in their places. It is not consistent with the principles of a conference to appoint managers whose opinions do not coincide with the objects thereof.<sup>6</sup>

Appointment of managers.

The duty of the managers—for they are not allowed to speak—is confined to the delivery and receipt of the resolutions to be communicated, or the bills to be returned, with reasons for disagreeing to amendments. One of their number reads the resolutions or reasons, and afterwards delivers the paper on which they are written, which is received by one of the managers for the other house. When

Duty of managers.

<sup>1</sup> 85 C. J. 473 (Sir J. Barrington); 88 ib. 488 (East India Company's Charter); 89 ib. 232 (Union with Ireland).

<sup>2</sup> 106 C. J. 210. 217. 223. Messages were, by resolution, 24th April, 1866, 121 C. J. 249. 256, substituted for conferences, in communicating addresses for

commissions under the Corrupt Practices Act, 15 & 16 Vict. c. 57 (see p. 586).

<sup>3</sup> Oaths Bill, 1858, 113 C. J. 182.

<sup>4</sup> 1 C. J. 154.

<sup>5</sup> 1 C. J. 154.

<sup>6</sup> 1 C. J. 350; 122 ib. 438.

the conference is over, the managers return to their respective houses and report their proceedings.

Confer-  
ences in  
regard to  
bills.

Messages have now practically superseded conferences in relation to bills : but the former course of proceeding must still be briefly explained. Let it be supposed that a bill sent up from the Commons has been amended by the Lords and returned ; that the Commons disagree to their amendments, draw up reasons, and desire a conference ; that the conference is held, and the bill and reasons are in possession of the House of Lords. If the Lords should be satisfied with the reasons offered, they send a message to acquaint the Commons that they do not insist upon their amendments, but if they insist upon any of their amendments, they desire another conference, at which they communicate their reasons. If the Commons persist in their disagreement to the Lords' amendments, they were formerly precluded, by the usage of Parliament, from desiring a third conference ; and unless they allowed the bill to drop, laid it aside, or deferred the consideration of the reasons and amendments, they desired a free conference. This practice, however, was departed from on one special occasion. In 1836, after two conferences upon the Municipal Corporations Bill, a free conference was held, according to ancient usage : <sup>1</sup> but the disagreement between the two houses continued, and the consideration of the Lords' amendments and reasons was postponed for three months. In the following session, another bill was brought in, to which amendments were made by the Lords, to which the Commons disagreed. The results of the free conference, however, had been so unsatisfactory, that the usage of Parliament was departed from, and four <sup>2</sup> ordinary conferences were successively held, with such success that the bill received the royal assent.

Free con-  
ference.

A free conference differs materially from the ordinary conference ; for, instead of the formal communication of reasons, the managers attempt, by discussion, to effect an agreement between the houses. If a free conference should prove as unsuccessful as the former, the disagreement is almost helpless : though, if the house in possession of the bill should be prepared to make concessions, it is competent to desire another free conference upon the same subject ; or, if a question of privilege or other new matter should arise, an ordinary conference may be demanded.<sup>3</sup> Until 1836, no free conference had

<sup>1</sup> 91 C. J. 783.

<sup>2</sup> 4 Hatsell, 42-45. 54.

<sup>3</sup> 92 C. J. 466. 512. 589. 646.

been held since the year 1740 ; nor has there been any subsequent example.

When the time appointed for a conference has arrived, business is suspended in both houses, the names of the managers are called over, and they leave their places, and repair to the conference chamber. The Commons, who come first to the conference, enter the room uncovered, and remain standing the whole time within the bar, at the table.<sup>1</sup> The Lords have their hats on till they come just within the bar of the place of conference, when they take them off and walk uncovered to their seats ; they then seat themselves, and remain sitting and covered during the conference. The lord (usually the lord privy seal) who receives or delivers the paper of resolutions or reasons stands up uncovered, while the paper is being transferred from one manager to the other : but while reading it he sits covered. When the conference is over, the Lords rise from their seats, take off their hats, and walk uncovered from the place of conference. The Lords who speak at a free conference, do so standing and uncovered.<sup>2</sup>

A few words may be added concerning other means of communication between the two houses, less open and ostensible than those already described. The representation of the executive government in both houses by ministers, who have a common responsibility for the measures and policy of the state, secures uniformity in the direction of the counsels of these independent bodies. Every public question is presented to them both, from the same point of view ; the judgment of the cabinet, and the sentiments of the political party which they represent, are adequately expressed in each house ; and a general agreement is thus attained, which no formal communications could effect. The organization of parties also exercises a marked influence upon the relations of the two houses. When ministers are able to command a majority in the Lords as well as in the Commons, concord is assured. The views of the dominant party are carried out spontaneously in both houses, as if they were a single chamber, but when ministers enjoying the confidence of the majority of the Commons are opposed by a majority of the Lords, it is difficult to avert frequent disagreements between the two houses. The policy approved by one party is condemned by the other ; and the minority in the Commons naturally look for the support of the

Procedure  
of a con-  
ference.

Relations  
between  
the two  
houses.

<sup>1</sup> By order, 16th Jan. 1702, none but managers are to stand within the bar.

<sup>2</sup> 4 Hatsell, 27, n. ; see also Standing Orders [H. L.] 94-96 ; 1 C. J. 156.

majority in the Lords. Hence the decisions of one house are often contested by the other. When this conflict of opinion arises upon a bill, the proceedings which ensue have already been explained. When it arises upon a question of policy or administration, the course pursued is, in great measure, determined by the character of the difference. The two houses may differ upon abstract questions without any grave consequences. If the policy of the government is condemned, or their conduct censured, or legislation arrested in one house, however, it is natural that the other should be ready with resolutions in support of the cause of which it approves. Thus during the contest between Mr. Pitt and the coalition, in 1784, the Lords were forward in giving countenance to the minister, in his struggle with a hostile majority of the Commons.<sup>1</sup> Again, in the great Reform crisis of 1831-32, the Commons supported the ministers and their cause, when they were imperilled by the hostility of the Lords.<sup>2</sup> In 1839, when the opposition, in the Commons, had failed to arrest the establishment of a system of national education under an order in council by an address to the Crown, the upper house presented an address condemning the scheme, but without effect.<sup>3</sup> In the same year, the House of Lords having appointed a committee to inquire into the state of Ireland since 1835, in respect of crime and outrage, the Commons, regarding this step as an arraignment of the policy of the ministers, supported them by a vote of confidence.<sup>4</sup> In 1850, when the Lords censured the government for the course taken in reference to the claims of Don Pacifico upon Greece, the Commons came to the rescue, with a vote of approval and confidence.<sup>5</sup> In 1857, a vote of censure upon the policy of the government, in reference to the war in China, was negatived in the House of Lords : but, by a combination of parties, a vote to the same effect was carried in the House of Commons ; <sup>6</sup> and was followed by a dissolution.

In 1860, the Lords having rejected the bill for the abolition of the paper duties, the Commons responded by resolutions reasserting their privileges in regard to bills relating to taxation and supply (see p. 517). Again, in 1864, conflicting resolutions were agreed to in the two houses in relation to the Danish War.<sup>7</sup>

<sup>1</sup> May, Const. Hist. i. 54.

<sup>2</sup> May, Const. Hist. i. 97.

<sup>3</sup> May, Const. Hist. ii. 402, 71 L. J. 470, 94 C. J. 345, 366, 48 H. D. 3 s. 229. 1234, 49 ib. 128.

<sup>4</sup> 71 L. J. 148, 94 C. J. 202.

<sup>5</sup> 82 L. J. 222, 105 C. J. 475.

<sup>6</sup> 88 L. J. 533, 112 C. J. 81.

<sup>7</sup> 96 L. J. 538, 119 C. J. 405.

In 1871, a bill having been passed by the Commons for the abolition of purchase in the army, and providing compensation to the officers, which was refused a second reading by the Lords, a royal warrant was issued cancelling former regulations by which the purchase of commissions had been sanctioned. The Lords were thus constrained to reconsider the bill, in order to secure the pecuniary interests of the officers; but in proceeding with the bill, they placed on record a condemnation of the issue of the warrant.<sup>1</sup> It became a matter for consideration whether the Commons should be invited to respond to this adverse resolution: but as legislation was not arrested, and the vote of the Lords was without effect upon the policy or political position of ministers, the passing of the bill was accepted as a sufficient approval of the course adopted, without any retaliatory resolution. In 1881, the Lords condemned the policy of the government in regard to Afghanistan, and the Commons approved it.<sup>2</sup>

In 1882, the Lords having appointed a committee to inquire into the working of the Irish Land Act of the previous year, the Commons, after a long debate, agreed to a resolution that parliamentary inquiry, at that time, into the working of the Act tended to defeat its operation, and must be injurious to the interests of good government in Ireland.<sup>3</sup>

In 1885, the Lords carried a vote of censure upon the policy of the Government in regard to Egypt and the Soudan but similar proposals were defeated in the House of Commons.<sup>4</sup>

In 1909, the Lords having declined to pass the Finance Bill the Commons resolved that their action was a breach of the constitution and an usurpation of the rights of the Commons<sup>5</sup> (see p. 518).

In 1911, a motion declaring that the advice given by ministers to the King, whereby they obtained a pledge that a sufficient number of peers would be created to pass the Parliament Bill, was a gross violation of constitutional liberty was agreed to by the Lords but negatived by the Commons.<sup>6</sup>

In 1914, an amendment to the address declaring the inexpediency of proceeding further with the Government of Ireland Bill until it had been submitted to the judgment of the people was carried in the Lords and rejected by the Commons.<sup>7</sup>

<sup>1</sup> 103 L. J. 544, 561, 609.

<sup>2</sup> 113 L. J. 81, 84, 136 C. J. 154, 158.

<sup>3</sup> 114 L. J. 29, 137 C. J. 94.

<sup>4</sup> 117 L. J. 76, 140 C. J. 69, 71.

<sup>5</sup> 141 L. J. 451, 164 C. J. 546.

<sup>6</sup> 143 L. J. 381, 166 C. J. 388.

<sup>7</sup> 146 L. J. 43, 169 C. J. 20.

## CHAPTER XXI.

COMMUNICATIONS FROM THE CROWN TO PARLIAMENT : AND  
FROM PARLIAMENT TO THE CROWN.

King  
present in  
Parlia-  
ment.

THE King is supposed to be present in the High Court of Parliament, by the same constitutional principle which recognizes his presence in other courts : <sup>1</sup> but he can only take part in its proceedings by means which are acknowledged to be consistent with the parliamentary prerogatives of the Crown and the entire freedom of the debates and proceedings of Parliament. He may be present in the House of Lords, at any time during the deliberations of that house, where the cloth of estate is : but he may not be concerned in any of its proceedings, except when he comes in state for the exercise of his prerogatives. In earlier times, the sovereign was habitually present in the House of Lords, as being his council, whose advice and assistance he personally desired. King Henry VI., in the ninth year of his reign, declared, with the advice and consent of the Lords, " That it shall be lawful for the Lords to debate together, in this present Parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it." <sup>2</sup> Whence it appears that, at that time, it was customary for the king to be present at the deliberations of the Lords, even if his presence was not essential to their proceedings. When the sovereign ceased to take a personal part in their deliberations, it was still customary for him to attend the debates as a spectator.<sup>3</sup> Charles II.,<sup>4</sup> and his successors, James II., William III.,<sup>5</sup>

<sup>1</sup> See Hale, Jurisd. Lords, c. 1 ; Fortescue, c. 8 (by Amons), with note B. ; and 2 Co. Inst. 186.

<sup>2</sup> 3 Rot. Parl. 611.

<sup>3</sup> On the 24th Feb. 1640, while the trial of Lord Strafford was pending, the king came to the house, and the articles and answers were read to his Majesty, 2 Parl. Hist. 742.

<sup>4</sup> " Charles II. being sat, he told them it was a privilege he claimed from his ancestors to be present at their deliberations ; that, therefore, they should not

for his coming interrupt their debates, but proceed, and be covered." 12 L. J. 318 ; Marvell, i. 146. Nor was Charles II. an inattentive observer ; for on the 26th Jan. 1670, he reprimands the Lords for their " very great disorders, both at the hearing of causes, and in debates amongst themselves," 12 L. J. 413.

<sup>5</sup> William III. was present during the debate on the second reading of the Abjuration Bill, 2nd May, 1690, 14 L. J. 483 ; 3 Macaulay, Hist. 574.

and Queen Anne,<sup>1</sup> were very frequently present : but this questionable practice, which might be used to overawe that assembly, and influence their debates,<sup>2</sup> has wisely been discontinued since the accession of George I.<sup>3</sup> According to the practice of modern times, the sovereign is never personally present in Parliament, except on its opening and prorogation ; and occasionally for the purpose of giving the royal assent to bills during a session.<sup>4</sup>

The various constitutional forms by which the Crown communicates with Parliament, and by which Parliament communicates with the Crown, will now be noticed in succession, according to their relative importance and solemnity.

The most important modes by which the Crown communicates with Parliament are exemplified on those occasions when his Majesty is present, in person or by commission, in the House of Lords, to open or prorogue Parliament, and when a royal speech is delivered to both houses. In giving the royal assent to bills in person or by commission, the communication of the Crown with the Parliament is of an equally solemn character. On these occasions the whole Parliament is assembled in one chamber and the Crown is in immediate and direct communication with the three estates of the realm.

The mode of communication next in importance is by a written message under the royal sign manual, to either house singly,<sup>5</sup> or to both houses separately.<sup>6</sup> The message is brought by a member of the house, being a minister of the Crown, or one of the royal household.<sup>7</sup> In the House of Lords, the peer who is charged with the message acquaints the house from his place, that he has a message under the royal sign manual, which his Majesty had commanded him to deliver to their lordships. The lord chancellor then reads the message at length, all the lords being uncovered ; and it is afterwards read, or supposed to be read, again, at the table, by the Clerk.<sup>8</sup> In the House of Commons, the member who is charged with the message appears at the bar, where he informs the Speaker

<sup>1</sup> She was present for the first time on the 29th Nov. 1704, "at first on the throne and after, it being cold, on a bench at the fire," Jerviswood Corr. 15, cited by Lord Stanhope, Reign of Queen Anne, 106. She was present on the 15th Nov. and 6th Dec. 1705, ib. 205. 208.

<sup>2</sup> See 2 Macaulay, Hist. 35.

<sup>3</sup> 2 Hatsell, 371, n.; Chitty on Precognatives, 74. The last occasion appears

to have been the attendance of Queen Anne, on the 9th and 12th Jan. 1710, during the debates upon the war with Spain.

<sup>4</sup> 63 L. J. 885.

<sup>5</sup> 86 C. J. 488.

<sup>6</sup> 66 L. J. 958 ; 89 C. J. 575.

<sup>7</sup> If brought by one of the household, he appears in uniform—in the Lords, in his place ; in the Commons, at the bar.

<sup>8</sup> 66 L. J. 958.

that he has a message from the King to this house signed by his Majesty ; which, on being desired by the Speaker, he brings up to the chair. The message is delivered to the Speaker, who reads it at length, while all the members of the house are uncovered.<sup>1</sup> A message from the Crown, under the sign manual, is always received by members uncovered : but this custom does not apply to an answer to an address, or to the speech from the throne when read to the house from the chair.<sup>2</sup>

Subjects  
of such  
messages.

Such messages are usually communications in regard to important public events which require the attention of Parliament ; <sup>3</sup> the calling out for service of the army reserve, militia and territorial force (see p. 455) ; the making of provision for the exercise of the royal authority ; <sup>4</sup> the prerogatives, or property of the Crown ; <sup>5</sup> provision for the royal family, and other occasions which compel the executive to seek for pecuniary aid from Parliament (see p. 454). They may be regarded, in short, as additions to the royal speech, at the commencement of the session, submitting other matters to the deliberation of Parliament, besides the causes of summonses previously declared..

Communi-  
cation to  
both  
houses.

This analogy between a royal speech and a message under the sign manual is supported by several circumstances common to both. A speech is delivered to both houses, and every message under the sign manual should also be sent, if practicable, to both houses : but when they are accompanied by original papers, they have occasionally been sent to one house only. The more proper and regular course is to deliver them on the same day : but from the casual circumstance of both houses not sitting on the same day, or other accidents, it has frequently happened that messages have been delivered on different days.<sup>6</sup>

Verbal  
messages.

Another form of communication from the Crown to either house of Parliament, is in the nature of a verbal message, delivered, by command, by a minister of the Crown, to the house of which he is a member.<sup>7</sup>

<sup>1</sup> All the members present uncovered on the announcement of the death of the German emperor, Frederick, 15th June, 1888.

<sup>2</sup> 267 H. D. 3 s. 1443 ; 293 ib. 260 ; 58 H. C. Deb. 5 s. 1958.

<sup>3</sup> 40 L. J. 186 ; 44 ib. 74 ; 82 C. J. 111.

<sup>4</sup> 85 C. J. 466 ; 95 ib. 520 ; 165 ib. 171.

<sup>5</sup> 89 C. J. 189, 574.

<sup>6</sup> 2 Hatsell, 366 ; 66 L. J. 958, 89

C. J. 575 ; 82 L. J. 368, 105 C. J. 539.

<sup>7</sup> Arrest of a member to be tried by a military court martial, 39 C. J. 479 ; attendance of Mr. Speaker as representing the house, at Thanksgiving Service at St. Paul's Cathedral (1872), 127 ib. 61 ; at Westminster Abbey (1887), 142 ib. 293 ; at his Majesty's Coronation (1911), 166 ib. 75.



The other modes of communicating with Parliament are by the royal "pleasure," "recommendation," or "consent," being signified. <sup>Other modes of communication.</sup>

The King's pleasure is signified at the commencement of each Parliament, by the lord chancellor, that the Commons should elect a Speaker (see p. 141); and when a vacancy in the office of Speaker occurs in the middle of a Parliament, a communication of the same nature is made by a minister, in the house (see p. 147). His Majesty's pleasure is also signified for the attendance of the Commons in the House of Peers; in regard to the times at which he appoints to be attended with addresses; and concerning matters personally affecting the interests of the royal family.<sup>1</sup> At the end of a session, also, the royal pleasure is signified, by the lord chancellor, that Parliament should be prorogued. Under this head may likewise be included the royal approbation of the Speaker elect, signified by the lord chancellor. <sup>King's pleasure signified.</sup>

The King's recommendation is signified to the Commons by a minister of the Crown, on receiving petitions, on motions for the introduction of bills, or on the offer of other motions, involving any public expenditure or grant of money not included in the annual estimates, whether such grant is to be made in the committee of supply, or any other committee; or which would have the effect of releasing or compounding any sum of money owing to the Crown (see p. 459). <sup>King's recommendation.</sup>

The King's consent is given, by a privy councillor, to motions for leave to bring in bills;<sup>2</sup> or to amendments to bills,<sup>3</sup> or to bills in any of their stages,<sup>4</sup> or to instructions to committees on bills,<sup>5</sup> or to Lords' amendments to bills,<sup>6</sup> which concern the royal prerogatives, the hereditary revenues, or personal property or interests of the Crown or Duchy of Cornwall.<sup>7</sup> When the Prince of Wales is of age, his own consent is signified, as Duke of Cornwall, in the same manner.<sup>8</sup> The mode of communicating the recommendation and consent is the same; but the former is given at the very commencement of a proceeding, and must precede all grants of money: while the latter may be given at any time during the progress of a bill, in which the <sup>King's consent to bills.</sup>

<sup>1</sup> 86 C. J. 460.

<sup>2</sup> 106 C. J. 232; 107 ib. 142; 117 ib. 79. In 1853, the Queen's consent and recommendation were signified to the Land Revenues Bill, 108 ib. 625.

<sup>3</sup> 101 C. J. 843; 107 ib. 321.

<sup>4</sup> Second reading, 108 C. J. 375; 110 ib. 290; third reading, ib. 178.

<sup>5</sup> Civil List Bill, 1837, 93 C. J. 204.

<sup>6</sup> 101 C. J. 892; 103 ib. 729; 126 ib. 355.

<sup>7</sup> 77 C. J. 408; 86 ib. 485. 550; 91 ib. 548; 105 ib. 492.

<sup>8</sup> 118 C. J. 310; 119 ib. 368; 162 ib. 425; 168 ib. 138; 171 ib. 191. \*

consent of the Crown is required,<sup>1</sup> but where such a bill has been suffered, through inadvertence, to be read the third time and passed without the royal consent being signified, the proceedings have been declared null and void.<sup>2</sup>

Amend-  
ments in  
committee  
affecting  
the Crown.

In June, 1874, notice having been given of an amendment in committee on the Valuation of Property Bill, rendering Crown property rateable, doubts arose whether, as the consent of the Crown had not been signified, the question could be put by the chairman upon such amendment: but, after full consideration and review of precedents, it was determined that the chairman was bound to put the question. Several precedents were found, in the previous century, in which amendments affecting the interests of the Crown had been made in committees on bills, and the consent of the Crown was afterwards signified when such amendments were agreed to upon report.<sup>3</sup> Hence it appeared that it was for the house, and not for the committee, which cannot receive any communication from the sovereign, to guard the interests of the Crown. It is clear, from many precedents, that the house itself is reluctant to interfere for that purpose until the very latest stages of the bill.<sup>4</sup>

Consent of  
the Crown  
withheld.

A question of practice arose in the House of Lords, on the 1st July, 1844, on the third reading of the St. Asaph and Bangor Dioceses Bill to which the Government had not been instructed to signify the Queen's consent. A select committee was appointed to search for precedents, who reported that there were no precedents: but that the bill belonged to that class to which it had been the usage to give the consent of the Crown before passing the house; and that it had been the custom to receive such consent at various stages.<sup>5</sup> The consent of the Crown was withheld and the bill was withdrawn. Again in 1866, on the third reading of the Blackwater Bridge Bill, notice being taken that the Queen's consent had not been signified, Mr. Speaker declined to put the question.<sup>6</sup> In 1868, the Peerage (Ireland) Bill was withdrawn upon the second reading, when it was intimated that ministers would not advise her Majesty to give her consent to the bill at a later stage.<sup>7</sup>

<sup>1</sup> 98 C. J. 287; 99 ib. 309; 104 ib. 192; 105 ib. 338; 23 H. D. 1 s. 474. 551.

<sup>2</sup> 107 C. J. 157, 166 ib. 388, 418.

<sup>3</sup> Offences against Customs and Excise Laws Bill, 12th May, 1736, 22 C. J. 714; Murder of Captain Porteous Bill, 15th June, 1737, 22 ib. 899; Westminster Bridge Bill, 23rd March, 1740, 23 ib. 693;

Tenure of Ward-holding (Scotland) Bill, 22nd May, 1747, 25 ib. 392.

<sup>4</sup> 220 H. D. 3 s. 641.

<sup>5</sup> 76 L. J. 453. 467. 478, 76 H. D. 3 s. 122. 294. 591.

<sup>6</sup> 121 C. J. 423.

<sup>7</sup> 191 H. D. 3 s. 1564.

Another form of communication, similar in principle to the last, <sup>Crown places its interests at the disposal of Parliament.</sup> is when the Crown "places its interest at the disposal of Parliament," which is signified in the same manner,<sup>1</sup> and at various stages of the bill<sup>2</sup> by a minister of the Crown. In 1833, the King had referred, in his speech from the throne, to a measure relating to the church temporalities in Ireland, and before going into committee upon that subject, his Majesty's recommendation had been signified. Yet objection was taken upon the second reading of the bill, that the King had not formally placed his interests in the Irish bishoprics at the disposal of Parliament;<sup>3</sup> and a communication, in proper form, was afterwards made to that effect. In 1868, the government being unwilling to advise the Queen to place her interest in the temporalities of the bishoprics and benefices in Ireland at the disposal of Parliament, the House of Commons voted an address to her Majesty, praying that such interest should be placed at their disposal. In reply, the Queen desired that her interest should not stand in the way of the consideration of any measure relating to the Irish Church,<sup>4</sup> and the bill for suspending appointments to bishoprics and benefices in Ireland was proceeded with and passed by the Commons in opposition to the ministers of the Crown. A similar course was adopted by the Lords in 1875 in regard to Irish peerages.<sup>5</sup>

These several forms of communication are recognized as constitutional declarations of the Crown, suggested by the advice of its responsible ministers, by whom they are announced to Parliament in compliance with established usage. They cannot be misconstrued into any interference with the proceedings of Parliament, as some of them are rendered necessary by resolutions of the House of Commons, and all are founded upon parliamentary usage, which both houses have agreed to observe. This usage is not binding upon Parliament: but if, without the consent of the Crown previously signified, Parliament should dispose of the interests or affect the prerogative

<sup>1</sup> Church Temporalities (Ireland) Bill, 1833, 88 C. J. 381; Church of Ireland Bill, 1835, 1836, 90 ib. 447, 91 ib. 427; Canada Government Bill, 1840, 95 ib. 385; Established Church (Wales) Bill, 1895, 150 ib. 182; Benefices (No. 2) Bill, 1898, 153 ib. 285; Demise of the Crown Bill, 1901, 156 ib. 114; Osborne Estate Bill, 1902, 157 ib. 461; Irish Land Bill, 1903, 158 ib. 340; Established Church (Wales) Bill, 1912, 1913, 1914, 167 ib. 442, 168 ib. 218, 169 ib. 226.

<sup>2</sup> On presentation of bill under s. 31 (2), 157 C. J. 461; on second reading, 91 ib. 427; 156 ib. 114; on going into committee, 95 ib. 385; 167 ib. 442; during consideration of bill as amended, 153 ib. 285; on third reading, 158 ib. 340; on resumption of adjourned debate on third reading, 169 ib. 226.

<sup>3</sup> 17 H. D. 3 s. 966.

<sup>4</sup> 123 C. J. 160. 170.

<sup>5</sup> 107 L. J. 338. 372, 225 H. D. 3 s. 1210.

of the Crown, the Crown could still protect itself, in a constitutional manner, by the refusal of the royal assent to the bill. It is one of the advantages of this usage, that it obviates the necessity of resorting to the exercise of that prerogative.

Acknowledgment of messages from the Crown.

Written messages.

Having enumerated all the accustomed forms in which the royal will is made known to Parliament, it may now be shown, in the same order, in what manner they are severally acknowledged by each house.

The forms observed on the meeting and prorogation of Parliament, and the proceedings connected with the address in answer to the royal speech (see p. 160), and the royal assent to bills (see p. 391) have been already described. Messages under the royal sign manual are generally acknowledged by addresses in both houses, which are presented from one house by the "lords with white staves," *i.e.* the lord steward and the lord chamberlain; or sometimes by other lords specially named; and from the other by privy councillors, or members of the royal household, in the same manner as addresses in answer to royal speeches at the opening of Parliament (see p. 163).<sup>1</sup> In the Commons, however, it is not always necessary to reply to messages under the sign manual by address; as a prompt provision made by that house (see p. 454), is itself a sufficient acknowledgment of royal communications for pecuniary aid. Messages, other than messages touching pecuniary aid, such as messages relating to important public events,<sup>2</sup> or matters connected with the prerogatives, interests, or property of the Crown,<sup>3</sup> or calling for general legislative measures,<sup>4</sup> are answered by an address.

Verbal messages.

When the house is informed, by command of the Crown, of the arrest of a member to be tried by a military court martial (see p. 114), it immediately resolves upon an address of thanks to his Majesty, "for his tender regard to the privileges of this house."<sup>5</sup>

On royal pleasure, &c., being signified.

The matters upon which the royal pleasure is usually signified need no address in answer, as immediate compliance is given by the house; and the recommendation and consent of the Crown, as

<sup>1</sup> 109 C. J. 169, 132 H. D. 3 s. 307.

<sup>2</sup> 82 C. J. 114, &c.; calling out the reserve force, 1882, 137 ib. 399.

<sup>3</sup> 85 C. J. 466; 89 ib. 578; 95 ib. 520; 165 ib. 172.

<sup>4</sup> 85 C. J. 214.

<sup>5</sup> 70 C. J. 70. An address was also voted in reply to the communication of

Lord George Gordon's arrest in 1780, 37 ib. 903. As the arrest of a member to be tried by a naval court martial does not proceed immediately from the Crown, and the communication is only made from the Lords of the Admiralty (see p. 114), no address is necessary in answer to this indirect form of message.

already explained, are only signified as introductory to proceedings in Parliament, or essential to their progress.

These being the several forms of acknowledging communications proceeding from the Crown, it now becomes necessary to describe those which originate with Parliament. It is by addresses that the resolutions of Parliament are ordinarily communicated to the Crown. These are sometimes in answer to royal speeches or messages, but are more frequently in regard to other matters, upon which either house is desirous of making known its opinions to the Crown.

Addresses  
to the  
Crown.

Addresses are sometimes agreed upon by both houses, and jointly presented to the Crown, but are more generally confined to each house singly. When some event of unusual importance<sup>1</sup> makes it desirable to present a joint address, the Lords or Commons, as the case may be, agree to a form of address, and, having left a blank for the insertion of the title of the other house, communicate it, formerly at a conference, but now by message,<sup>2</sup> and desire their concurrence. The blank is filled up by the other house, and a message is returned, acquainting the house with their concurrence, and that the blank has been filled up. Such addresses are presented either by both houses in a body,<sup>3</sup> or by two peers and four members of the House of Commons;<sup>4</sup> and they have been presented also by committees of both houses;<sup>5</sup> by a joint committee of Lords and Commons,<sup>6</sup> and by the lord chancellor and the Speaker of the House of Commons.<sup>7</sup> The Lords always learn his Majesty's pleasure, and communicate to the Commons, by message, the time at which he has appointed to be attended.

Joint ad-  
dresses.

The addresses of the Commons in answer to the royal speech at the commencement of the session (see p. 163), were formerly moved as a resolution unprelaced by the preliminary words "Most Gracious Sovereign,—We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, beg leave to offer," &c., whereby the resolutions are addressed to the sovereign; and the resolution was referred to a committee for due preparation. According to present

Separate  
addresses.

<sup>1</sup> 87 C. J. 421; 89 ib. 325; 95 ib. 422; 97 ib. 324.

<sup>2</sup> 137 C. J. 88; 161 ib. 276.

<sup>3</sup> 87 C. J. 424; 72 L. J. 393; 74 ib. 276.

<sup>4</sup> 85 C. J. 652; 112 ib. 423; 114 ib. 373; 137 ib. 94, &c. A joint address having been agreed to, 2nd Sept. 1880,

when the Queen was at Balmoral, her Majesty dispensed with its formal presentation, see 112, L. J. 391, 135 C. J. 428.

<sup>5</sup> 1 C. J. 877.

<sup>6</sup> 2 C. J. 462.

<sup>7</sup> 16 C. J. 54.

usage such addresses are moved in due form for presentation to his Majesty.<sup>1</sup> Sometimes addresses are agreed to upon the report of committees of the whole house, not only in relation to matters involving public expenditure, but concerning other public affairs.<sup>2</sup> Addresses or resolutions are ordered to be presented by the whole house;<sup>3</sup> by the lords with white staves,<sup>4</sup> or by privy councillors, or members of the royal household;<sup>5</sup> and, in some peculiar cases, by members specially nominated.<sup>6</sup>

Their subjects.

The subjects upon which addresses are presented are too varied to admit of enumeration. They have comprised every matter of foreign<sup>7</sup> or domestic policy;<sup>8</sup> the administration of justice;<sup>9</sup> the confidence of Parliament in the ministers of the Crown;<sup>10</sup> the expression of congratulation or condolence (which are agreed to *nemine dissente* by the lords and *nemine contradicente* by the Commons);<sup>11</sup>

<sup>1</sup> This practice was followed in the case of the address on the war with Russia, 31st March, 1854, 109 C. J. 169, 132 H. D. 3 s. 307. Usually, however, the motion for an address is made in the form "That an humble address be presented to his Majesty to . . ." and the necessary prefatory words are inserted when the actual copy of the address is prepared, *e.g.* 152 C. J. 299.

<sup>2</sup> State of the nation, 22nd Dec. 1783, 39 C. J. 848. 855; defence of the kingdom, 20th June, 1803, 58 ib. 528, &c.

<sup>3</sup> 92 C. J. 492; 113 ib. 31; 116 ib. 16; 129 L. J. 255, 152 C. J. 299.

<sup>4</sup> 129 L. J. 6.

<sup>5</sup> 159 C. J. 226.

<sup>6</sup> 10 C. J. 295; 67 ib. 391.

<sup>7</sup> 78 C. J. 278; 82 ib. 118; 88 ib. 471; assassination of President Lincoln, 1865, 120 ib. 229; invasion of Belgium, 1914, 146 L. J. 402, 169 C. J. 449.

<sup>8</sup> Removal of a judge, 89 C. J. 235; appointment of a royal commission with power to examine witnesses on oath, 143 ib. 46 (as to the administration of an oath by a royal commission, see Todd, ii. 99; 147 Parl. Deb. 4 s. 1341); reference of questions of law relating to the alleged disqualification of a member to the judicial committee of the privy council, 167 C. J. 519.

<sup>9</sup> 85 C. J. 472.

<sup>10</sup> 7 C. J. 325.

<sup>11</sup> 105 C. J. 508; 108 ib. 371; 113 ib. 31; 120 ib. 344; 122 ib. 70; 123 ib. 142. 309. Death of Grand Duchess of Hesse

(1878), 111 L. J. 16, 134 C. J. 20. Assassination of the Emperor of Russia (1881), 113 L. J. 100, 136 C. J. 130. When this address was answered, a letter from the Russian ambassador to Earl Granville was communicated, by her Majesty's command, forwarding a telegraphic message from the Emperor of Russia, in acknowledgment of the address, 113 L. J. 130, 136 C. J. 141. Death of the Duke of Albany (1884), 116 L. J. 120, 139 C. J. 149. Death of Frederick William, German emperor (1888), 120 L. J. 230, 143 C. J. 293. The sympathy of the house was expressed on the death of the Prince Consort (1861), on the death of the Duke of Clarence (1892), and on the death of Prince Henry Maurice of Battenberg (1896), in the address in answer to the royal speech, 94 L. J. 6, 117 C. J. 7; 124 L. J. 7, 147 C. J. 10; 128 L. J. 16, 151 C. J. 13. The death of William I., German emperor, was announced to the house, 9th March, 1888, by the first lord of the treasury, 323 H. D. 3 s. 706. Mr. Speaker read to the house, 10th April, 1888, a communication that he had received through the secretary of state for foreign affairs from the chancellor of the German empire, that the Imperial German Parliament had unanimously resolved that the veneration for their deceased monarch, and participation in the grief of the German people expressed by the House of Commons, had called forth the deepest sympathy and gratitude throughout Germany, 143 C. J. 142. Marriage of the

and, in short, representations upon all points connected with the government and welfare of the country; but they ought not to be presented in relation to any bill depending in either house of Parliament.<sup>1</sup>

When a joint address is to be presented by both houses, the lord chancellor and the House of Lords, and the Speaker and the House of Commons, proceed in state to the palace at the time appointed.<sup>2</sup> On reaching the palace, the two houses assemble in a chamber adjoining the throne room, and when his Majesty is prepared to receive them, the doors are thrown open, and the lord chancellor and the Speaker<sup>3</sup> advance side by side, followed by the members of the two houses respectively, and are conducted towards the throne by the lord chamberlain. The lord chancellor reads the address, and presents it on his knee to his Majesty, His Majesty returns an answer, and both houses retire from the royal presence.

Mode of  
presenta-  
tion of  
joint  
addresses.

When addresses are presented separately, by either house, the forms observed are similar to those already described, except that the addresses of the Commons are read by their Speaker. In presenting the address, the mover of the address in the Lords is on the right hand of the lord chancellor, and the seconder on his left: while the mover and seconder of the address in the Commons are on the left hand of the Speaker. When the lord chancellor or Speaker has

Separate  
addresses.

Duke of York (1893), 125 L. J. 325, 148 C. J. 434. Assassination of the President of the French Republic (1894), 126 L. J. 189, 149 C. J. 246. Commemoration of the completion of the sixtieth year of Queen Victoria's reign (1897), 129 L. J. 255, 152 C. J. 299 (on division). Assassination of the King of Italy (1900), 132 L. J. 378, 155 C. J. 366. Death of the Duke of Saxe-Coburg and Gotha, Duke of Edinburgh (1900), 132 L. J. 385, 155 C. J. 380. To King Edward VII. on the death of Queen Victoria and his accession to the throne (1901), 133 L. J. 8, 156 C. J. 6. Death of the German Emperor Frederick (1901), 133 L. J. 357, 156 C. J. 378. Assassination of the King of Portugal and the Duke of Braganza (1908), 140 L. J. 30, 163 C. J. 25. To the King on the death of King Edward VII. and his accession to the throne (1910), 142 L. J. 128, 165 C. J. 153. Death of the King of Denmark (1912), 144 L. J. 132, 167 C. J. 167. Death of the Emperor

of Japan (1912), 144 L. J. 244, 167 C. J. 321. Assassination of the King of the Hellenes (1913), 145 L. J. 40, 168 C. J. 31. Assassination of the Archduke Francis Ferdinand and his Consort (1914), 146 L. J. 247, 169 C. J. 303. On the occasion of an explosion in the French Chamber of Deputies, the Speaker was instructed to communicate the sympathy of the house to the President of the Chamber, 11th December, 1893, 148 C. J. 621, 19 Parl. Deb. 4 s. 1050. 1178. 1617.

<sup>1</sup> 12 L. J. 72. 81. 88; 8 C. J. 670; 1 Grey, Deb. 5.

<sup>2</sup> Before the construction of the processional road the Speaker's state coach and the carriages of the members of the House of Commons, were entitled, by privilege or custom, to approach the palace through the central Mall in St. James's Park.

<sup>3</sup> The Speaker is always on the left hand of the chancellor.

Dress of  
peers and  
members.

read the address, he presents it to his Majesty, kneeling upon one knee. The lords attend his Majesty in levée dress : but the members of the House of Commons can assert their privilege of freedom of access to the throne, by accompanying the Speaker in their ordinary attire.<sup>1</sup>

Answers  
to ad-  
dresses.

When addresses have been presented by the whole house, the lord chancellor in one house, and the Speaker in the other, report the answer of his Majesty ; but when they have been presented in the ordinary way, the answer is reported generally, in the Lords, by the lord chamberlain, in levée dress, with his white staff ; and in the Commons, by one of the royal household, who appears at the bar in uniform and, on being called by the Speaker, reads his Majesty's answer.<sup>2</sup>

Resolu-  
tions com-  
muni-  
cated.

Another mode of communication with the Crown, less direct and formal than an address, has been occasionally adopted ; when resolutions of the house,<sup>3</sup> and resolutions and evidence taken before a committee,<sup>4</sup> have been ordered to be laid before the sovereign. In such cases the resolutions have been presented in the same manner as addresses, and answers have sometimes been returned.<sup>5</sup>

Messages  
to the  
royal  
family.

It is to the reigning sovereign, or regent, alone that addresses are presented by Parliament ; but messages are frequently sent by both houses to members of the royal family, to congratulate them upon their nuptials or other auspicious events ;<sup>6</sup> or to condole with them on family bereavements.<sup>7</sup> Resolutions have also been ordered to be laid before members of the royal family. Certain members are always nominated by the house to attend those illustrious personages with the messages or resolutions ; one of whom afterwards acquaints the house (in the Lords, in his place or at the table ;

<sup>1</sup> 50 Parl. Deb. 4 s. 456. They are not permitted to enter the royal presence with sticks or umbrellas, see 2 Hatsell, 390, *n.* ; Colchester, iii. 604-607.

<sup>2</sup> The proceedings of the house have sometimes been interrupted to receive the sovereign's answer, 108 C. J. 438 ; 134 ib. 23. On the 19th November, 1914, the King's answer was reported by a privy councillor who appeared at the bar in uniform, 170 C. J. 15.

<sup>3</sup> 37 C. J. 330 ; 39 ib. 884 ; 40 ib. 1157 ; 60 ib. 206 ; 67 ib. 462 ; 78 ib. 316, &c.

<sup>4</sup> 90 C. J. 534.

<sup>5</sup> 39 C. J. 885 ; 60 ib. 211.

<sup>6</sup> 40 L. J. 584 ; 72 ib. 53 ; 74 ib. 6 ; 73 C. J. 424 ; 95 ib. 88 ; 148 ib. 434.

<sup>7</sup> 53 L. J. 367 ; 75 C. J. 480 ; 92 ib. 493 (the Queen Dowager) ; 105 ib. 508. To the Duchess of Edinburgh, on the assassination of the Emperor of Russia (1881), 113 L. J. 100, 136 C. J. 130 ; to the Duchess of Albany (1884), 116 L. J. 120, 139 C. J. 149 ; to the German empress (1888), 120 L. J. 230, 143 C. J. 293 ; to the Duchess of Saxe-Coburg and Gotha, Duchess of Edinburgh (1900), 132 L. J. 385, 155 C. J. 380 ; to Queen Alexandra, 165 C. J. 153 ; 167 ib. 167 ; 168 ib. 31.



and, in the Commons, at the bar) with the answers which were returned.<sup>1</sup>

Communications are also made to both houses by members of the royal family, which are either delivered by members in their places,<sup>2</sup> or are conveyed to the house by letters addressed to the Speaker.<sup>3</sup>

Such being the direct and formal communications between the Crown and Parliament, it may be added that the presence of ministers in both houses maintains the closest relations of the Crown with the legislature. The representation of every department of the state in Parliament, and the principles of ministerial responsibility, long since established in our constitution, bring the executive government and the legislature into uninterrupted intercourse and combined action. Where no formal communication between the Crown and Parliament is technically required, the introduction of a measure by his Majesty's ministers, attests the royal approval; and when amendments are made by either house, which ministers accept instead of abandoning the measure or resigning office, they are under an obligation to advise the King to signify his royal assent to the bill, when it has been agreed to by both houses. Again, when the measures or policy of ministers are condemned by Parliament, a change of administration restores agreement between the executive and the legislature. Ministers are responsible alike to the Crown and to Parliament, and so long as they are able to retain the confidence of both, the harmonious action of the several estates of the realm is secured.<sup>4</sup>

<sup>1</sup> 53 L. J. 369; 72 ib. 53; 95 C. J. 95; 105 ib. 539; 136 ib. 223; 148 ib. 444; 165 ib. 171; 167 ib. 177; 168 ib. 90. In the case of the messages of condolence to the German Empress in 1888 and to the Duchess of Saxe-Coburg and Gotha, Duchess of Edinburgh in 1900, the Speaker was directed to communicate the messages to her Majesty's ministers resident at their courts for presentation, 143 C. J. 293; 132 L. J. 398, 155 C. J. 380.

<sup>2</sup> 58 C. J. 211; 75 ib. 288.

<sup>3</sup> 64 C. J. 86; 68 ib. 253; 69 ib. 324, 433.

<sup>4</sup> For further illustrations of the constitutional relations of ministers with Parliament, see Macaulay, Hist. iv. 434; May, Const. Hist. chap. 7; Todd, ii. 25; Bagehot on the English Constitution; Mr. Gladstone's "Kin Beyond the Sea," in *North American Review*, Sept. 1878; *Gleanings of Past Years*, vol. i.

## CHAPTER XXII.

## MODE OF PETITIONING PARLIAMENT.

Ancient  
mode of  
petition-  
ing.

THE right of petitioning the Crown and Parliament, for redress of grievances, is acknowledged as a fundamental principle of the constitution ;<sup>1</sup> and has been uninterruptedly exercised from very early times. Before the constitution of Parliament had assumed its present form, and while its judicial and legislative functions were ill-defined, petitions were presented to the Crown and to the great councils of the realm, for the redress of those grievances which were beyond the jurisdiction of the common law. There are petitions in the Tower of the date of Edward I., before which time it is conjectured that the parties aggrieved came personally before the council, or, preferred their complaints in the country before inquests composed of officers of the Crown. Assuming that the separation of the Lords and Commons had been effected in the reign of Henry III. (see p. 18), these petitions appear to have been addressed to the Lords alone : but, taking the later period of the 17th Edward III. (1343) for the separation of the two houses, they must have been addressed to the whole body then constituting the High Court of Parliament. Be this as it may, it is certain that, from the reign of Edward I. until the last year of the reign of Richard II.,<sup>2</sup> no petitions have been found which were addressed exclusively to the Commons.

Receivers  
and triers  
of peti-  
tions.

During this period, the petitions were, with few exceptions, for the redress of private wrongs ; and the mode of receiving and trying them was judicial rather than legislative. Receivers of petitions were appointed, ordinarily the masters in chancery, who, sitting in some public place accessible to the people, received their complaints, and transmitted them to the auditors or triers. The triers were committees of prelates, peers and judges. By them the petitions were examined ; and, if the common law offered no redress, their case was submitted to the High Court of Parliament.<sup>3</sup> The functions

<sup>1</sup> "Nulli negabimus, aut differemus rectum vel justitiam."—Magna Carta of King John, c. 29 ; see Bill of Rights, art.

5 ; 1 Will. & Mary, sess. 2, c. 2.

<sup>2</sup> 3 Rot. Parl. 448.

<sup>3</sup> See Elsynge, chap. 8 ; 4 Co. Inst. 11.

of receivers and triers of petitions have long since given way to the immediate authority of Parliament at large : but their appointment, at the opening of every Parliament, was continued by the House of Lords without interruption until the year 1886. They were constituted as in ancient times, and their appointment and jurisdiction were expressed in Norman French.<sup>1</sup>

In the reign of Henry IV., petitions began to be addressed in considerable numbers to the House of Commons. The courts of equity had, in the mean time, relieved Parliament of much of its remedial jurisdiction ; and the petitions were now more in the nature of petitions for private bills than for equitable remedies for private wrongs. Of this character were many of the earliest petitions ; and the orders of Parliament upon them can only be regarded as special statutes of private or local application. As the limits of judicature and legislation became defined, the petitions applied more distinctly for legislative remedies and were preferred to Parliament through the Commons : <sup>Petitions to the Commons.</sup> but, in passing private bills, Parliament has retained the mixed judicial and legislative character of ancient times.

In later times, petitions continued to be received in the Lords by triers and receivers of petitions or by committees whose office was of a similar character ; and in the Commons, they were referred to the committee of grievances and to other committees specially appointed for the examination and report of petitions : <sup>Change of system.</sup> but since the Commonwealth, it appears to have been the practice of both houses to consider petitions in the first instance,<sup>4</sup> and only to refer the examination of them to committees in particular cases. In early times, all petitions prayed for the redress of some specific grievance : but after the Revolution of 1688, the present practice of petitioning, in respect of general measures of public policy, was gradually introduced.<sup>5</sup>

The existing practice in regard to petitions will be considered under

<sup>1</sup> 21st January, 1886, 118 L. J. 19. There were receivers and triers for Great Britain and Ireland ; and others for Gascony and the lands and countries beyond the sea, and the Isles. The appointment of spiritual lords as triers was discontinued earlier, 70 ib. 13 ; 73 ib. 579 ; 80 ib. 13 ; 89 ib. 11.

<sup>2</sup> See 1 Parl. Writs, 160 ; 2 ib. 156 ; 3 Rot. Parl. 448 ; 4 Co. Inst. 11. 21. 24 ; Elyngge, chap. 8 ; Hale, Jurisd. Lords, chap. 10-13 ; Reports on Petitions, Parl.

Pap. (H. C.) sess. 1831-2, No. 639 ; sess. 1833, No. 2, especially the learned evidence of Sir Francis Palgrave.

<sup>3</sup> 1 C. J. 582 ; 2 ib. 49. 61 ; 3 ib. 649 ; 4 ib. 228 ; 7 ib. 287.

<sup>4</sup> 11 L. J. 9. 57. 184 ; 14 ib. 23 ; 12 C. J. 83.

<sup>5</sup> See 13 Chas. II. c. 5 ; 10 C. J. 88 ; 13 ib. 287 ; ib. 518 (Kentish petition, 1701) ; 18 ib. 425. 429-431 (Septennial Bill) ; Hallam, Const. Hist. ii. 445 ; May, Const. Hist. i. 349.

three divisions : viz. The form of petitions ; the character and substance of petitions ; and their presentation to Parliament.

Form of  
petitions.

Petitions to the House of Lords should be superscribed, " To the right honourable the lords spiritual and temporal in Parliament assembled ; " <sup>1</sup> and to the House of Commons, " To the honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled." A general designation of the parties to the petition should follow ; and if there be one petitioner only, his name after this manner : " The humble petition of [here insert the name or other designation] sheweth." The general allegations of the petition are concluded by what is called the " prayer," in which the particular object of the petitioner is expressed. To the whole petition are generally added these words of form, " And your petitioners, as in duty bound, will ever pray, &c. ; " to which are appended the signatures or marks of the parties.

Remonstrances.

Without a prayer, a document will not be taken as a petition ; <sup>2</sup> and a paper, assuming the style of a declaration, <sup>3</sup> and address of thanks, <sup>4</sup> or a remonstrance only, without a proper form of prayer, will not be received. In other cases, remonstrances respectfully worded, and concluding with a proper form of prayer, have been received : <sup>5</sup> but a document, distinctly headed as a remonstrance, though concluding with a prayer, has been refused. <sup>6</sup> A so-called memorial, properly worded, and concluding with a prayer, has been received. <sup>7</sup>

Signature,  
&c.

The petition should be written upon parchment or paper, for a printed, <sup>8</sup> lithographed, <sup>9</sup> or type-written <sup>10</sup> petition will not be received by the Commons. It must be signed <sup>11</sup> and at least one signature should be upon the same sheet or skin upon which the petition is written. <sup>12</sup> The petition must have original signatures or marks, and not copies from the original, <sup>13</sup> nor signatures of agents

<sup>1</sup> A petition intended for the last Parliament will not be received ; see *Mirror of Parliament*, 1831, vol. 3, p. 2199.

<sup>2</sup> 7 C. J. 427 ; 98 ib. 457.

<sup>3</sup> 60 H. D. 3 s. 640.

<sup>4</sup> 64 H. D. 3 s. 423.

<sup>5</sup> 97 C. J. 470 ; 65 H. D. 3 s. 1225. 1227 ; 98 C. J. 461 ; 159 H. D. 3 s. 761. 1524 ; see also 67 C. J. 398 ; 74 ib. 391.

<sup>6</sup> 70 H. D. 3 s. 745.

<sup>7</sup> 240 H. D. 3 s. 1682.

<sup>8</sup> 48 C. J. 738 ; 68 ib. 624. 648 ; 72 ib.

128. 156. This rule has not been adopted by the Lords.

<sup>9</sup> 52 H. D. 3 s. 158.

<sup>10</sup> 50 Parl. Deb. 4 s. 1297.

<sup>11</sup> 85 C. J. 541 ; 91 ib. 325.

<sup>12</sup> 62 C. J. 155 ; 72 ib. 128. 144 ; 77 ib. 127 ; 66 H. D. 3 s. 1032 ; 100 C. J. 335 ; 109 ib. 293. If petitions are presented without any signatures to the sheet on which they are written, they are not noticed in the votes.

<sup>13</sup> 91 C. J. 576.

on behalf of others, except in case of incapacity by sickness ;<sup>1</sup> and it must not have letters, affidavits, appendices or other documents annexed.<sup>2</sup> The signatures must be written upon the petition itself, and not pasted upon, or otherwise transferred to it.<sup>3</sup> Where a petition consists of more than one sheet only those signatures will be considered valid which are written on sheets headed by the prayer of the petition ; but on every sheet after the first the prayer may be reproduced in print or by other mechanical process.<sup>4</sup> Petitions of corporations aggregate should be under their common seal.<sup>5</sup> A petition must be in the English language, or accompanied with a translation, which the member who presents it states to be correct ;<sup>6</sup> it must be free from interlineations or erasures.<sup>7</sup>

Any forgery or fraud in the preparation of petitions, or in the signatures attached, or the being privy to, or cognizant of, such forgery or fraud, is liable to be punished as a breach of privilege,<sup>8</sup> and is considered and dealt with by the house as a matter of privilege.<sup>9</sup> There have been frequent instances in which such irregularities have been discovered and punished by both houses.<sup>10</sup> In some cases the house has satisfied itself by the rejection of the petition,<sup>11</sup> or by discharging the order for its lying on the table.<sup>12</sup> A motion to that effect has been permitted without previous notice ;<sup>13</sup> though a claim to draw attention, as a matter of privilege,

Forgery or fraud.

<sup>1</sup> 9 C. J. 369. 433 ; 10 ib. 285 ; 34 ib. 800 ; Report, Public Petitions Committee, 1848, 103 ib. 786.

<sup>2</sup> 81 C. J. 82 ; 82 ib. 41 ; 111 ib. 102.

<sup>3</sup> Special Reports, Public Petitions Committee, 104 C. J. 283 ; 105 ib. 79.

<sup>4</sup> Terms of reference to Public Petitions Committee, sess. 1907, 162 C. J. 27.

<sup>5</sup> The presentation of petitions is recorded in the Commons' Journal by a reference to that Report of the committee on Public Petitions in which they are entered (see p. 560).

<sup>6</sup> 76 C. J. 173. 189 ; 100 ib. 560.

<sup>7</sup> 82 C. J. 118. 262 ; 86 ib. 748.

<sup>8</sup> See resolution, 2nd June, 1774, 34 C. J. 800.

<sup>9</sup> 238 H. D. 3 s. 1741.

<sup>10</sup> Ballinasloe petition (R. Pilkington), 1825, 80 C. J. 445 ; Athlone Election petition (T. Flanagan), 1827, 82 ib. 491. 561. 582 ; 84 ib. 187 ; 89 ib. 92 ; Epworth petition, 1843, 98 ib. 523. 528 ; Liverpool Corporation Waterworks Bill, 82 L. J.

367. 477 ; Aylesbury Election petition, 1851, 106 C. J. 193. 289 ; Prince Azem Jah (J. M. Mitchel and others), 1865, 120 ib. 157. 336 ; Special Report of Committee on the Glasgow Municipality Extension Bill, 1879, 134 ib. 175. 180 ; East Gloucester Railway Bill, 1862, 94 L. J. 300. 321. 378. 386 ; 142 C. J. 202. 306. 313.

<sup>11</sup> Halifax petition, 1867, 122 C. J. 345 ; Special Report of Public Petitions Committee, 1872, 127 ib. 370. 395. In sessions 1893-4 and 1912-13 special reports were made to the House recommending that certain petitions should be rejected, but no action was taken thereon by the House, Parl. Pap. (H. C.) sess. 1893-4, No. 393, 148 C. J. 533 ; Parl. Pap. (H. C.) sess. 1912-13, No. 401, 167 C. J. 464.

<sup>12</sup> Petitions from Dublin against the Sale of Intoxicating Liquors on Sunday (Ireland) Bill, 1878, 133 C. J. 130. 139. 181. 184. Special Report, Public Petitions Committee, 1883, 138 ib. 153.

<sup>13</sup> 228 H. D. 3 s. 1400.

to expressions in a petition presented at a previous sitting, has not been conceded.<sup>1</sup>

Character  
and sub-  
stance of  
petitions.

The language of a petition should be respectful and temperate and free from disrespectful language to the sovereign,<sup>2</sup> or offensive imputations upon the character or conduct of Parliament,<sup>3</sup> or the courts of justice,<sup>4</sup> or other tribunal,<sup>5</sup> or constituted authority ;<sup>6</sup> and if objection be taken to a petition upon such a ground, the petition should be read at the table.<sup>7</sup> On the 2nd March, 1822, a petition from Newcastle, imputing notorious corruption to the House of Commons, was, on a division, not received ;<sup>8</sup> and a motion having been made that a petition alleging that members of Parliament had taken a bribe, do lie upon the table, the motion was withdrawn. On the 2nd August, 1832, a petition threatening to resist the law, was not allowed to lie upon the table.<sup>9</sup> In 1838, a petition containing disrespectful language towards the other house of Parliament was withdrawn.<sup>10</sup> In 1840, a petition from J. J. Stockdale was rejected, as containing an intentional and deliberate insult to the house.<sup>11</sup> On the 28th March, 1848, a petition having been brought up and read, objection was taken to a paragraph praying for the abolition of the House of Lords, on the ground that it prayed for a fundamental alteration of the institutions of the country : but the objection, after debate, was not pressed, and the petition, being otherwise temperately expressed, was ordered to lie upon the table.<sup>12</sup> On the 3rd May, 1867, a petition in favour of certain Fenian prisoners, expressed in strong but guarded language, was allowed to lie upon the table ; and a motion afterwards made for discharging that order was not supported by the house.<sup>13</sup> On the 8th June, 1874, notice being taken that a petition contained offensive imputations upon the conduct of the Public Petitions committee, it was ordered to be withdrawn.<sup>14</sup> On the 3rd July, 1874, notice being taken that a petition contained imputations upon the conduct of certain judges, and statements

<sup>1</sup> 187 H. D. 3 s. 14.

<sup>2</sup> 122 H. D. 3 s. 863.

<sup>3</sup> 82 C. J. 589 ; 84 ib. 275.

<sup>4</sup> 76 C. J. 105.

<sup>5</sup> 76 C. J. 92 ; 83 ib. 541.

<sup>6</sup> 78 C. J. 431 ; 91 ib. 698.

<sup>7</sup> 164 H. D. 3 s. 978 ; 202 ib. 1307.

<sup>8</sup> 6 H. D. 2 s. 1231 ; 26th June, 1823, 9 ib. 1253 ; see also debate on a petition praying inquiry into the mismanagement of the Eastern Counties Railway, by Mr. Hudson and two other members, 105

H. D. 3 s. 581 ; also the petition alleging fraudulent practices against a member, 116 C. J. 364, 377, 381 ; see also debate on petitions complaining of members (p. 312).

<sup>9</sup> 87 C. J. 547.

<sup>10</sup> 93 C. J. 236.

<sup>11</sup> 95 C. J. 193.

<sup>12</sup> 103 C. J. 384, 97 H. D. 3 s. 1055.

<sup>13</sup> 122 C. J. 294, 186 H. D. 3 s. 1929 ; 187 ib. 1886.

<sup>14</sup> 129 C. J. 209.

affecting the social and legal position of individuals, it was ordered to be withdrawn, and the printed copies to be cancelled.<sup>1</sup> On the 12th April, 1875, the petitions committee reported that a petition from Prittlewell contained offensive imputations upon the lord chief justice and two of the judges of the Court of Queen's Bench, and reflected, in an unbecoming manner, upon the Speaker and the proceedings of the house; and on the 15th April, the order for the petition to lie upon the table was, after discussion, read and discharged.<sup>2</sup> A petition may not allude to debates in either house of Parliament,<sup>3</sup> or to intended motions, if merely announced in debate:<sup>4</sup> but when notices have been formally given and printed on the notice paper, petitions referring to them are received. The procedure on petitions praying for public money, &c., has already been described (see p. 461). By standing order No. 80, the usage under which the house refused to entertain petitions against a resolution or bill imposing a tax or duty for the service of the year, was discontinued. In the Lords, a petition relating to a bill before the Commons, which has not yet reached the house, or which has already been thrown out, will not be received.

S. O. 80,  
Appendix  
I.

On the 18th June, 1849, a petition was offered from W. S. O'Brien and others, attainted of treason, praying to be heard by counsel against the Transportation for Treason (Ireland) Bill. It was objected that no petition could be received from persons civilly dead: but the house, after debate, agreed, under the peculiar and exceptional circumstances of the case, to receive the petition. The petitioners' sentence of death had been commuted to transportation; they had denied the legal power of the lord-lieutenant to transport them, and the bill against which they had petitioned was introduced in order to remove doubts upon the question which they had raised. It was, in fact, a bill to declare the legality of a sentence which they maintained to be contrary to law. Before the introduction of a bill a petition from W. S. O'Brien, upon the subject of his sentence, had been already received by the house.<sup>5</sup>

Petition  
from  
person  
attainted.

Petitions from British subjects resident abroad as well as petitions from inhabitants of British colonies having local parliaments have always been received; and also those of foreigners resident in this country. Petitions have also been occasionally received from

Petitions  
from  
abroad.

<sup>1</sup> 129 C. J. 276.

109 ib. 160.

<sup>2</sup> 130 C. J. 134, 145.

<sup>4</sup> 85 C. J. 107; 63 H. D. 3 s. 192; 114

<sup>3</sup> 77 C. J. 150; 82 ib. 604; 91 ib. 616; 97 ib. 259; 103 ib. 406, 633; 105 ib. 160;

ib. 820.

<sup>5</sup> 106 H. D. 3 s. 389.

foreigners not within British jurisdiction: but in 1876, when a petition from inhabitants of Boulogne-sur-Mer, several of whom appeared to be British subjects, was offered, a select committee appointed to consider the matter did not advise its reception.<sup>1</sup>

Duty of  
members  
in the  
presenta-  
tion of  
petitions.

Petitions are to be presented by a member of the house to which they are addressed,<sup>2</sup> but, as has been already stated, a member cannot be compelled to present a petition (see p. 87). A member who has not taken the oath or affirmation cannot present a petition.<sup>3</sup> According to established usage the Speaker of the House of Commons does not present petitions to the house. A member, who presents a petition, must, pursuant to the order of the house, affix his name at the beginning thereof.<sup>4</sup> On the 6th April, 1876, notice being taken that a member's name had been affixed to a petition without his authority, the petition was ordered to be withdrawn; <sup>5</sup> and it has been ruled that the member's name should be signed by his own hand, and that it is irregular to authorize another person to affix it.<sup>6</sup>

Presenta-  
tion of  
petitions  
from the  
corpora-  
tions of  
London  
and  
Dublin.

Petitions from the corporation of London are presented to the House of Commons by the sheriffs, at the bar <sup>7</sup> (being introduced by the Serjeant with the mace),<sup>8</sup> or by one sheriff only, if the other be a member of the house,<sup>9</sup> or unavoidably absent.<sup>10</sup> In 1840, both the sheriffs being in the custody of the Serjeant-at-arms, petitions from the corporation of London were presented at the bar by the lord mayor, an alderman, and several of the common council; by the lord mayor, aldermen, and commons; and by two aldermen, and several members of the common council.<sup>11</sup> Under a privilege conceded in the year 1813, petitions from the corporation of Dublin may be presented in the same manner, by their lord mayor.<sup>12</sup> If the lord mayor should be a member, he must present the petition in his place

<sup>1</sup> Parl. Pap. (H. C.) sess. 1876, No. 232, 131 C. J. 148. 181. 200, 228 H. D. 3 s. 1411.

<sup>2</sup> 263 H. D. 3 s. 1011.

<sup>3</sup> Objection was taken, in March, 1881, to the presentation of a petition by Mr. Bradlaugh, the High Court of Justice having adjudged that the making an affirmation had not qualified him to sit and vote: but notice of appeal having been given, it was allowed, 259 H. D. 3 s. 892. On the 22nd June, 1882, he was informed by Mr. Speaker that he could not present a petition until he had taken the oath, 137 C. J. 295.

<sup>4</sup> 140 C. J. 11; see also, resolutions, 20th March, 1833, and 9th May, 1844, 88

ib. 190; 99 C. J. 284, 74 H. D. 3 s. 714.

<sup>5</sup> 131 C. J. 141, 228 H. D. 3 s. 1320.

<sup>6</sup> 229 H. D. 3 s. 586.

<sup>7</sup> On the 17th April, 1690, a question for admitting the sheriffs was negatived, on division, 5 Parl. Hist. 586.

<sup>8</sup> MS. Officers and Usages of the House of Commons, p. 46.

<sup>9</sup> 90 C. J. 506; 103 ib. 123. 331. 731; 136 ib. 248.

<sup>10</sup> 75 C. J. 213; 94 ib. 432.

<sup>11</sup> 95 C. J. 43. 82. 198.

<sup>12</sup> By resolution, 23rd Feb. 1813, 68 C. J. 209, 24 H. D. 1 s. 698; 124 C. J. 85; 134 ib. 269; 137 ib. 288; 143 ib. 109; 144 ib. 183; 171 ib. 191.



as a member, and not at the bar.<sup>1</sup> Lord Cochrane proposed to extend this privilege to the Lord Provost of Edinburgh, but his amendment was lost, Mr. Tierney remarking "that the Scotch were generally thought a prudent people, and the corporation of Edinburgh would know better than to send their provost four hundred miles to present a petition."<sup>2</sup>

Petitions are not received on the first day of a session, when the King's Speech is delivered (see p. 162).<sup>3</sup>

Petitions  
on first  
day of  
session.  
Presenta-  
tion of a  
petition  
from a  
member.

A peer or member may petition the house to which he belongs: but if a member desires to have a petition from himself presented to the house, he should entrust it to some other member, as he will not be permitted to present it himself.<sup>4</sup> This rule, however, does not extend to cases in which a member presents a petition signed by himself in his representative capacity as chairman of a county council or of any public incorporated body.

To facilitate the presentation of petitions, they may be transmitted through the post-office, to members of either house, free of postage, provided they be sent without covers, or in covers open at the sides, and do not exceed 32 ounces in weight.

Transmis-  
sion by  
post.

In both houses it is the duty of members to read petitions which are sent to them, before they are presented, lest any violation of the rules of the house should be apparent on the face of them; in which case it is their duty not to offer them to the house. If the Speaker observes, or any member takes notice of, any irregularity, the member having charge of the petition does not bring it up, but returns it to the petitioners. If any irregularity escapes detection at this time, but is discovered when the petition is further examined, no entry of its presentation appears in the votes. In other cases more formal notice is taken of the violation of the rules of the house, and the petitions are not received;<sup>5</sup> or are ordered to be withdrawn,<sup>6</sup> or are

Irregulari-  
ties in  
petitions.

<sup>1</sup> On the 1st July, 1850, a petition from the corporation of Dublin was presented by the lord mayor in his place as a member (wearing his robes). The officers of the corporation, in their robes, were allowed seats below the bar: but having brought the mace into the house, they were desired by the Serjeant to remove it, MS. note. So again Friday, 14th March, 1851, 6th Feb. 1880, and on several other occasions. MS. Officers and Usages of the House of Commons, p. 46.

<sup>2</sup> 68 C. J. 209, 24 H. D. 1 s. 705.

<sup>3</sup> In Feb. 1880, the Lord Mayor of

Dublin had arranged to present a petition on the day of meeting, but on receiving an intimation of the practice, he postponed the ceremony until the next day.

<sup>4</sup> So ruled by Mr. Speaker, 30th Aug. 1841 (Sir Valentine Blake), 59 H. D. 3 s. 476; 30th April, 1846 (Sir J. Graham), and 9th July, 1850 (Mr. F. O'Connor).

<sup>5</sup> 96 C. J. 159; 104 ib. 154; 105 ib. 160; 109 ib. 160; 111 ib. 102.

<sup>6</sup> 93 C. J. 236; 100 ib. 335; 103 ib. 633; 116 ib. 364 (as containing libellous charges against a member of the house and other parties).

rejected.<sup>1</sup> A member who has reason to believe that the signatures to a petition are genuine, is justified in presenting it, although doubts may have been raised as to their authenticity : but in such cases the attention of the house should be directed to the circumstance.<sup>2</sup>

Presenta-  
tion of  
petitions  
to the  
Lords.

Up to this point the practice of the Lords and Commons is similar : but the forms observed in presenting petitions differ so much, that it will be necessary to describe them separately. On the 1st May, 1868, it was ordered by the lords, " That the name of the lord presenting a petition relating to any public matter be written thereon,"<sup>3</sup> and on the 30th May, 1685, " That any lord who presents a petition, shall open it before it be read."<sup>4</sup> At the time of presentation the lord may comment upon the petition, and upon the general matters to which it refers ; and debate thereon may ensue : but a lord who intends to speak upon a petition, usually gives notice of its presentation. When the petition has been laid upon the table, an entry of that fact is placed on the Lords' Minutes and Journals, with the prayer of the petition : but petitions are rarely printed at length in the journals, unless they relate to proceedings of a judicial character.<sup>5</sup>

Presenta-  
tion of  
petitions  
to the  
Commons.

It is to the representatives of the people that petitions are chiefly addressed, and to them they are sent in such numbers, that restrictions have been necessarily imposed upon the discussion of their merits. Formerly, the practice of presenting petitions had been generally similar to that of the House of Lords : but the number had so much increased,<sup>6</sup> and the business of the house was so much interrupted by the debates which arose on receiving petitions,<sup>7</sup> that standing orders dealing with the matter were adopted in 1842 and 1853. In accordance with these orders, a member, on the presentation of a petition, may read the prayer and make a statement as to the

S. O. 76-  
79, Ap-  
pendix 1.

<sup>1</sup> 95 C. J. 193 ; 122 ib. 345.

<sup>2</sup> 117 H. D. 3 s. 399.

<sup>3</sup> 100 L. J. 138.

<sup>4</sup> 14 L. J. 22.

<sup>5</sup> 74 L. J. 236.

<sup>6</sup> In the five years ending 1832, 23,283 public petitions were presented to the House of Commons ; in the five years ending 1842, 70,072 ; in the five years ending 1852, 62,248 ; in the five years ending 1862, 63,003 ; in the five years ending 1867, 53,305 ; in the five years ending 1872, 101,573 ; in the five years ending 1877, 91,846 ; in the five years ending 1882, 72,850 ; in the five years ending

1887, 73,815 ; in the five years ending 1892, 50,141 ; in the five years ending 1897, 56,910 ; in the five years ending 1902, 35,646 ; in the five years ending 1907, 27,853 ; in the five years ending March, 1913, 24,413 ; in the four years ending 1916, 1076. Since 1833, 957,997 petitions have been presented. 33,742 petitions were presented in session 1893-4, a number only exceeded by the 33,898 of session 1843.

<sup>7</sup> In 1833 and 1834, sittings from twelve to three were devoted to petitions and private bills.

parties from whom it comes, the number of its signatures and its material allegations.. If a petition conforms to the rules or practice of the house it is brought to the table by the direction of the Speaker.<sup>1</sup> No debate is allowed thereon, but the petition may be read by the Clerk, at the table, if required.<sup>2</sup>

In the case of a petition complaining of a present personal grievance, calling, as an urgent necessity, for an immediate remedy, the matter contained in such petition may be brought into discussion on the presentation thereof.

Discussion  
of  
petitions  
relating to  
present  
personal  
griev-  
ances.

On the 14th June, 1844, it was ruled by Mr Speaker that a petition of parties complaining of their letters having been detained and opened by the post office, and praying for inquiry, was not of that urgency that entitled it to immediate discussion, especially as notice of its presentation had been given on the previous day, which proved that the matter was such as admitted of delay : <sup>3</sup> but on the 24th June, 1844, debate was allowed on a similar petition of which no previous notice had been given. In the latter case, however, the complaint was that "letters *are* secretly detained and opened ; " and thus a "present personal grievance" was alleged, while in the former case a past grievance only had been complained of.<sup>4</sup> On the 5th July, 1855, a petition complaining of the recent misconduct of the police in Hyde Park, and of injuries personally sustained by the petitioners, was held not to justify a debate, as the grievance complained of did not demand an immediate remedy.<sup>5</sup> On the same ground, the Speaker ruled that a petition presented 1st May, 1890, praying for the appointment of a commission to inquire into the municipal contracts of the borough of Salford, did not come within the operation of standing order No. 78.<sup>6</sup> Nor, under cover of a motion for the adjournment of the house, will a member be permitted to bring under discussion the contents of a petition which he would be restrained by the standing order from debating : <sup>7</sup> but a personal explanation has been permitted, without any question being before the house, upon matters affecting a member, which have been alluded to in a petition.<sup>8</sup>

It will be observed that, although the standing orders restrict

Debates  
upon  
petitions.

<sup>1</sup> When a petition has been laid upon the table, it is irregular for any member to remove it, 105 C. J. 99.

<sup>2</sup> 79 H. D. 3 s. 496 ; 106 ib. 300.

<sup>3</sup> 99 C. J. 398, 75 H. D. 3 s. 894.

<sup>4</sup> 75 H. D. 3 s. 1264.

<sup>5</sup> 139 H. D. 3 s. 453.

<sup>6</sup> 343 H. D. 3 s. 1809.

<sup>7</sup> 7th July, 1856 (attorney-general and the Bedford charities).

<sup>8</sup> 48 H. D. 3 s. 226 ; 109 ib. 235 ; and 7th July, 1856.

debate to urgent cases, that restriction does not extend to a petition complaining of a matter affecting the privileges of the house, such a case being governed by the general rule that a question of privilege is always entitled to immediate consideration (see p. 241).<sup>1</sup> If the matter does not demand the immediate interposition of the house, the course would be to appoint by order that the petition be taken into consideration on a future day, and be printed for the information of the house.<sup>2</sup>

Commit-  
tee on  
Public  
Petitions.

All public petitions, except petitions regarding a personal grievance if dealt with under standing order No. 78, or a matter of privilege, are referred to the "committee on Public Petitions," under whose directions they are classified, analyzed and, when necessary, printed at length.<sup>3</sup> The reports of this committee, printed at intervals during the session, point out, under classified heads, not only the subject of each petition, but the number of signatures to which addresses are affixed, and which are written on sheets headed by the prayer of the petition,<sup>4</sup> the general object of every petition, and the total number of petitions and the signatures in reference to each subject.

Printing  
of peti-  
tions.

When the peculiar arguments and facts or general importance of a petition require it, it is printed at full length in an appendix to the notice paper of the house, and is accessible by purchase to the public. If a petition relates to a subject with respect to which the member presenting it has given notice of a motion, and has not been ordered to be printed by the committee, the member may, after notice given, move that the petition be printed and circulated with the notice paper of the house.<sup>5</sup> In some cases, petitions have been ordered to be printed with the notice paper, with the signatures attached thereto,<sup>6</sup> and in others for the use of members only.<sup>7</sup> A petition has been ordered to be printed for the use of members only, with the names of the persons who had signed it.<sup>8</sup> Sometimes petitions which have been already printed, have been ordered to be reprinted.<sup>9</sup>

<sup>1</sup> 104 C. J. 302; 105 ib. 110; 112 ib. 231, 232, 146 H. D. 3 s. 27. 97; 113 C. J. 68; 114 ib. 357; 116 ib. 377. 381, 164 H. D. 3 s. 1178; 168 ib. 1855.

<sup>2</sup> 86 H. D. 3 s. 328; 119 C. J. 173.

<sup>3</sup> 88 C. J. 95.

<sup>4</sup> Pursuant to Special Report, Public Petitions committee, 11th April, 1878, 133 C. J. 205, and to sessional orders. If the chairman of a public meeting signs a petition on behalf of those assembled, the fact is recorded in the report of the committee.

<sup>5</sup> Such a motion, if unopposed, may be

made before the commencement of public business (see p. 220), and is open to debate and objection like any other motion, 97 C. J. 329, 63 H. D. 3 s. 1057; 79 ib. 686. This order has been made regarding petitions presented in a former session, 102 C. J. 22. 203; 112 ib. 155; 113 ib. 331.

<sup>6</sup> 97 C. J. 302; 98 ib. 396. 460. 549; 101 ib. 142.

<sup>7</sup> 100 C. J. 538. 648; 101 ib. 1021; 105 ib. 45; 106 ib. 209; 116 ib. 377.

<sup>8</sup> 97 C. J. 57.

<sup>9</sup> 98 C. J. 216; 103 ib. 30.

## CHAPTER XXIII.

## ACCOUNTS, PAPERS, AND RECORDS PRESENTED TO PARLIAMENT.

PARLIAMENT is invested with the power of ordering all documents to be laid before it, which are necessary for its information. Each house enjoys this authority separately, but not in all cases independently of the Crown. Accounts and papers relating to trade, finance, and general or local, matters, are ordered directly, and are returned in obedience to the order of the house whence it was issued : but returns of matters connected with the exercise of royal prerogative, are obtained by means of addresses to the Crown. Returns  
by order  
and ad-  
dress.

The distinction between these two classes of returns should be borne in mind : as, on the one hand, it is irregular to order directly that which should be sought for by address ; and, on the other, it is a compromise of the authority of Parliament to resort to the Crown for information which it can obtain by its own order. The application of the principle is not always clear : but, as a general rule, it may be stated that all public departments connected with the collection or management of the revenue, or which are under the control of the treasury, or are constituted or regulated by statute, may be reached by a direct order from either house of Parliament : but that public officers and departments, subject to his Majesty's secretaries of state or the privy council, are to receive their orders from the Crown.

Thus, returns from the Commissioners of Customs and of Inland Revenue, the Post-office, the Board of Trade and the Treasury, are obtained by order. These include every account that can be rendered of the revenue and expenditure of the country ; of commerce and navigation ; of salaries and pensions ; of general statistics ; and of facts connected with the administration of all the revenue departments. Addresses are presented for treaties with foreign powers, for despatches to and from the governors of colonies, and for returns connected with the army, the civil government, and the administration of justice. Where returns relate to the expenditure of public

money upon any Crown property, they are obtained by order, and not by address.<sup>1</sup>

Failure to  
make re-  
turns to  
addresses.

When an address for papers has been presented to the Crown, the parties who are to make them appear to be within the immediate reach of an order of the house; as orders of the House of Commons for addresses have been read, and certain persons who had not made the returns required, have been ordered to make them to the house forthwith.<sup>2</sup> In other cases, however, further addresses have been moved, praying the Crown to give directions that papers be laid before the house forthwith.<sup>3</sup>

Orders  
dis-  
charged.

When it is discovered that an address has been ordered for papers which should properly have been presented to the house by order, the error is corrected by discharging the order for the address, and ordering that the papers be laid before the house.<sup>4</sup> In the same manner, when a return has been ordered, for which an address ought to have been moved, the order is discharged, and an address is presented instead.<sup>5</sup> Where the order for a return is found not to comprise all the particulars desired, it is usual to discharge the order, and make another in a corrected form. Sometimes, however, without discharging the order, public papers or other particulars have been ordered to be added to the return,<sup>6</sup> or the order for the return has been read and amended.<sup>7</sup> Similarly a resolution for an address has been read, and another address ordered for additional information,<sup>8</sup> or an address has been ordered asking that the information, previously addressed for, may be extended to include additional information.<sup>9</sup> An order has been made that certain particulars specified in an order for a return shall be separately stated,<sup>10</sup> while an order for a return,<sup>11</sup> or so much of an order as related to certain portions of a return, has been discharged.<sup>12</sup> A return which has been presented has also been ordered to be amended.<sup>13</sup> Orders of a former

<sup>1</sup> Windsor Castle and Buckingham Palace, 19th April, 1826; Greenwich Park, 3rd June, 1850; Marble Arch, 18th March, 1852; Richmond Park, 12th June, 1854; Metropolitan Parks, 28th July, 1854; St. James's Park, 21st April, 1856, and 20th May, 1857. In the latter case the right of the house to order such a return, having been questioned, was conclusively established.

<sup>2</sup> 90 C. J. 413. 650; 95 ib. 448.

<sup>3</sup> 95 C. J. 220; 102 ib. 692; 120 ib. 70.

<sup>4</sup> 92 C. J. 580, &c.

<sup>5</sup> 92 C. J. 365; 104 ib. 623, &c.

<sup>6</sup> 110 C. J. 56. 230; 116 ib. 99; 117 ib. 337; 121 ib. 143; 123 ib. 69; 126 ib. 330; 127 ib. 277; 148 ib. 182; 165 ib. 42.

<sup>7</sup> 143 C. J. 489.

<sup>8</sup> 109 C. J. 288.

<sup>9</sup> 146 C. J. 169.

<sup>10</sup> 127 C. J. 277.

<sup>11</sup> 148 C. J. 589.

<sup>12</sup> 126 C. J. 89.

<sup>13</sup> 122 C. J. 322; 123 ib. 178 (by address).

session relating to papers are also amended, or otherwise dealt with, as circumstances may require.

If one house desires any return relating to the business or proceedings of the other, neither courtesy nor custom allows such a return to be ordered: but an arrangement is generally made, by which the return is moved for in the other house; and, after it has been presented, a message is sent to request that it may be communicated.<sup>1</sup> A message is sometimes sent requesting that a return of certain matters may be communicated; and such return is prepared and communicated accordingly.<sup>2</sup> It is not usual to send a message for a return which has been obtained from other departments, by order or address. For such a return it is more regular to move in the usual manner.<sup>3</sup>

Returns may be moved for, either by order or address, relating to any public matter, in which the house or the Crown has jurisdiction.<sup>4</sup> They may be obtained from all public offices, and from corporations, bodies, or officers constituted for public purposes, by Acts of Parliament or otherwise: but not from private associations, such as Lloyd's, nor from individuals not exercising public functions. The papers and correspondence sought from government departments should be of a public and official character, and not private or confidential. On the 3rd July, 1884, notice having been taken that the order for an address for a copy of Dr. Crichton Brown's treatise on Education related to a private matter over which the house had no jurisdiction, and involved a question of copyright, the order was discharged.<sup>5</sup> The opinions of the law officers of the Crown, given for the guidance of ministers, in any question of diplomacy or state policy, being included in the class of confidential documents, have generally been withheld from Parliament. In 1858, however, this rule was, under peculiar and exceptional circumstances, departed from, and the opinions of the law officers of the Crown upon the case of the Cagliari were laid before Parliament.<sup>6</sup>

Returns relating to the other house.

Subjects of, and restrictions on power of moving for, returns.

<sup>1</sup> 111 C. J. 250. 270. 294. In 1856, a notice had been given of a return of fees on private bills in both houses, but on an intimation from the Speaker, the return was confined to the House of Commons, 111 C. J. 120.

<sup>2</sup> 123 C. J. 212; 127 ib. 141.

<sup>3</sup> 127 C. J. 396. 408.

<sup>4</sup> To secure regularity in the form of these returns, it was recommended by the

Select Committee on Printing in 1841 that every member be advised, before he gives notice of a motion for a return, to consult the librarian, Parl. Pap. (H. C.) sess. 1841, No. 181; see also Report from Select Committee on Printing, Parl. Pap. (H. C.) sess. 1857 (I.), No. 122.

<sup>5</sup> 139 C. J. 336.

<sup>6</sup> 113 C. J. 128, 149 H. D. 3 s. 178.

However ample the power of each house to enforce the production of papers may be, a sufficient cause must be shown for the exercise of that power; and if considerations of public policy can be urged against a motion for papers, it is either withdrawn, or otherwise dealt with according to the judgment of the house.

Returns  
not made.

If parties neglect to make returns in reasonable time, they are ordered to make them forthwith;<sup>1</sup> or so much of returns as has not been made.<sup>2</sup> If they continue to withhold them, they are ordered to attend at the bar of the house;<sup>3</sup> and unless they satisfactorily explain the causes of their neglect, and comply with the order of the house, they will be censured or punished according to the circumstances of the case.<sup>4</sup> A person has been reprimanded by the Lords for having made a return to an order, which he was not required or authorized to make, and for framing it in a form calculated to mislead the house.<sup>5</sup> The addition of particulars to a return, not specified in the order of the House of Commons, has been ruled by Mr. Speaker to be an irregularity.<sup>6</sup>

Presenta-  
tion of  
returns to  
addresses  
or orders  
in a sub-  
sequent  
session.

When Parliament is prorogued before a return is presented, it is not the modern practice to renew the address or order in the following session, but the order is held to have force from one session to another until it is complied with. Formerly an order which had not been complied with was renewed in an ensuing session as if no order had previously been given, in accordance with the view that a prorogation puts an end to almost every proceeding pending in Parliament (see p. 50). Returns were often presented however by virtue of addresses in a preceding session, without any renewal of the address,<sup>7</sup> and occasionally in compliance with an order of a former session.<sup>8</sup> Returns have been ordered also "to be prepared in order to be laid before the house in the next session;"<sup>9</sup> and orders of a former session have been read, and the papers ordered to be laid before the house forthwith.<sup>10</sup> The order for an address made by a former Parliament has been read, and the house being informed that certain persons had not made the return, they were ordered forthwith to make a return to the house.<sup>11</sup>

<sup>1</sup> 90 C. J. 413; 114 ib. 371; 119 ib. 291; 121 ib. 475.

<sup>2</sup> 131 C. J. 354.

<sup>3</sup> 75 C. J. 404; 89 ib. 386; 96 ib. 363.

<sup>4</sup> 90 C. J. 575; 81 L. J. 134.

<sup>5</sup> 82 C. J. 89.

<sup>6</sup> 338 H. D. 3 s. 1717.

<sup>7</sup> 98 C. J. 428; 103 ib. 579. 775; 104

ib. 239. 284, &c.; 106 ib. 5; 108 ib. 209.

<sup>8</sup> 99 C. J. 301; 103 ib. 131; 104 ib. 35. 88. 133, &c.; 106 ib. 24; 108 ib. 293; 129 ib. 7; 135 ib. 126, &c.

<sup>9</sup> 78 C. J. 472; 80 ib. 631.

<sup>10</sup> 78 C. J. 72; 114 ib. 371.

<sup>11</sup> 90 C. J. 413.



Besides the modes of obtaining papers by order and by address both houses of Parliament are constantly put in possession of documents by command of his Majesty and in compliance with Acts of Parliament. Papers presented by command, and by Act.

Judgment rolls, exhibits, and certified copies of documents relating to appeals, are delivered in at the bar of the House of Lords, upon oath. Other papers and returns were formerly delivered at the bar, upon oath, in the same manner : but now they are either presented by a minister of the Crown, or are forwarded by the department to the Clerk of the Parliaments, for presentation. In the Commons, when a minister of the Crown has any papers of special importance to present, he goes to the bar and, on being called by the Speaker, he brings them up.<sup>1</sup> When such papers are brought up, they are generally ordered as a matter of course to lie upon the table, but, upon the question that they do lie upon the table, the mover can found a statement to the house, and a debate can arise ;<sup>2</sup> though objection has been taken to a course which brought on debate under inconvenient conditions.<sup>3</sup> In accordance with the resolution of the house of the 7th April, 1851, accounts and other papers which are laid before the house by Act of Parliament, or the order of the house, are presented, by the deposit of the papers in the office of the Clerk of the house. A minister may move for a return from his own department, without notice (see p. 219) and immediately present it, in compliance with the order which has just been made.<sup>4</sup> Forms observed in presenting papers.

Papers commanded to be presented to either house by his Majesty may be delivered during a parliamentary recess to the Clerk of the Parliaments in the case of the House of Lords and to the librarian in the case of the House of Commons, and such delivery is to be deemed to be the presentation of them to the house. A list of the papers so delivered is entered in the journal of each house on its re-assembling and the order that they do lie upon the table is then made.<sup>5</sup> Presentation of command papers during recess.  
S. O. 111, H. L.  
S. O. 96, H. C.  
Appendix I.

Occasionally, blank papers, familiarly known as "dummies," are "Dummies."

<sup>1</sup> By usage, such papers are only to be presented by privy councillors.

<sup>2</sup> Sir G. Lewis, 1857, on an estimate of cost of the Persian War, 146 H. D. 3 s. 1132 ; Mr. Lowe, 1862, and Mr. Bruce, 1865, on papers relating to education, 165 ib. 191, 178 ib. 1535 ; Mr. Bruce, 1873, on the Royal Parks (Rules), 214 H. D. 3 s. 199 ; Mr. Gladstone, 1884, on Egypt (the

proposed conference), 289 H. D. 3 s. 1104 ; and 1885, on affairs in the Soudan, 294 ib. 873.

<sup>3</sup> 178 H. D. 3 s. 1535.

<sup>4</sup> See debate on the attorney-general's motion for copy of the record of a conviction and judgment, 137 C. J. 75, 266 H. D. 3 s. 1804.

<sup>5</sup> 129 L. J. 7 ; 152 C. J. 4, &c.

presented, instead of the real documents, a practice which the exigencies of public business render necessary : but if used as a colourable compliance with an order of the house, it is open to grave objections. It was therefore ordered, 20th March, 1871, that papers are to "be laid upon the table in such a form as to ensure a speedy delivery thereof to members;"<sup>1</sup> and this order was communicated to the several public departments.

Papers to  
lie upon  
the table.

When accounts and papers are presented, they are ordered to lie upon the table. An order has been made, that a paper be taken into consideration on a future day ; and on the consideration thereof a motion has been founded.<sup>2</sup> If necessary, the papers are ordered to be printed, or are referred to committees, or abstracts are ordered to be made and printed. Sometimes papers of a former session are ordered to be printed or reprinted.

Distribu-  
tion of  
papers.  
Lords.

Commons.

Papers printed by order of the Lords are, on application, distributed gratuitously to members of the House of Commons, and to other persons with orders from peers. They are also accessible to the public by sale. The Commons have more fully applied the principle of sale, as the best mode of distribution to the public.<sup>3</sup> Each member, under the regulations now in force, can, on application, receive a copy of every paper printed by the house : but he is not entitled to more than one copy, without obtaining an order from the Speaker.<sup>4</sup> Certain reports and papers, viz. reports of royal commissions and of select committees, and all papers relating to the estimates, are distributed to every member as a matter of course, without application.<sup>5</sup>

Delivery  
to mem-  
bers by  
the Vote  
Office.

The Vote Office is charged with the delivery of printed papers to members of the house, who should leave their addresses at the office, in order that papers may be forwarded to them, either during the session or in the recess.

Transmis-  
sion by  
post.

To facilitate the distribution of parliamentary papers, they are sent through the post-office, to all places in the United Kingdom, at a rate of postage not exceeding one halfpenny for every two ounces in weight, whether prepaid or not, provided they be sent without a cover, or with a cover open at the sides, and without any writing or marks upon

<sup>1</sup> 126 C. J. 96.

<sup>2</sup> 125 C. J. 8. 27.

<sup>3</sup> Second Report of Printed Papers committee, 1835, Parl. Pap. (H. C.) sess. 1835, No. 392, 90 C. J. 461. 544.

<sup>4</sup> This rule is not strictly enforced, as regards bills and estimates before the house, which may generally be obtained

by members, on application at the Vote Office.

<sup>5</sup> In sessions 1888, 1889, 1890, and 1894, select committees were appointed in the Commons, "to superintend the form, and to regulate the distribution of parliamentary papers," 143 C. J. 485 ; 144 ib. 20 ; 145 ib. 64 ; 149 ib. 52.

them. The members of both houses are also entitled, during a session, to send, free of postage, all Acts of Parliament, bills, minutes, and votes, by writing their names upon covers provided for that purpose, in the proper offices.

By these various regulations, the papers laid before Parliament are effectually published and distributed. Each paper is distinguished by a sessional number at the foot of the page, and by the date at which the order for printing is made ; and they are classified and arranged in volumes at the end of each session.

Arrange-  
ment of  
parlia-  
mentary  
papers.

Papers which are not printed are open to the inspection of members in the library of the house. In some cases, papers of a local or private character have been ordered to be printed at the expense of the parties if they think fit.<sup>1</sup> In other cases, they have been ordered to be returned to a public department.<sup>2</sup> Sometimes part of a return only has been ordered to be printed.<sup>3</sup> The orders of a former session, that a return do lie upon the table and be printed, have been discharged ; and papers have been withdrawn that have been laid upon the table.<sup>4</sup>

Unprinted  
papers.

As they come before Parliament in the form of papers presented to both houses something must be said here of those administrative orders, rules and regulations which constitute what is sometimes called delegated or subordinate legislation. Although these rules and orders when made do not require the sanction of an Act of Parliament before acquiring the force of law, as do provisional orders (see Chapters XXXI. and XXXII.) yet parliament has retained some measure of control, differing both in degree and in mode of exercise, over the body by which they are formulated. It is impossible to give an exhaustive list here, but a few general remarks may serve to illustrate the operation of the system. All these rules and orders are required to be laid before both houses of parliament as soon as they are made or, if parliament be not sitting at the time, as soon as possible after its next meeting.<sup>5</sup> In order to ascertain the period during which they are required to lie upon the table and the mode in which parliament exercises its control over them, resort must be had in each case to the statute under which they are made as no general rule exists. In the simplest cases there is only an obligation to lay the rules, etc., upon

Statutory  
orders and  
regula-  
tions.

<sup>1</sup> 101 C. J. 990 ; 113 ib. 42. 303 ; 115 ib. 505 ; 116 ib. 125.

<sup>2</sup> 100 C. J. 880 ; 125 ib. 80.

<sup>3</sup> 124 C. J. 209 ; 125 ib. 70.

<sup>4</sup> 128 C. J. 10 ; 134 ib. 18 ; 135 ib. 232 ;

160 ib. 21.

<sup>5</sup> As to the preliminary publication of such rules in certain cases, see 56 & 57 Vict. c. 66, s. 1.

the table of each house,<sup>1</sup> although in some of these cases there is in addition a prohibition against the authority taking any action upon the rule for a prescribed period of time.<sup>2</sup> In other cases where the Crown is empowered to act by Order in Council, the statute requires that the draft order in council shall be laid before both houses of parliament and that the order in council shall not be made unless both houses present addresses to the Crown praying for the order to be made.<sup>3</sup>

In others, such as special orders and regulations relating to factories and workshops and orders in council relating to, and the rules of, the Supreme Court of Judicature, the orders, &c., come into force from the date of their issue or a date fixed by the orders, but may be annulled wholly or in part if an address or resolution of either house to that effect is carried within a period fixed by the statute under which they are made;<sup>4</sup> while in other cases, such as statutes of the governing bodies of some universities and colleges, schedules of documents in public offices which it is proposed to destroy, and draft certificates relating to railways made by the Board of Trade, action on the part of the Crown in issuing an order in council or on the part of the authority making the order is delayed for a certain period, during which a resolution of either house will abrogate the orders, &c., wholly or in part.<sup>5</sup>

Calcula-  
tion of  
period.

The days during which a paper is to lie upon the table are calculated, in the absence of any statutory direction to the contrary<sup>6</sup> not according to the days on which the House actually sits, but of days during the session of Parliament.<sup>7</sup> Unless it be otherwise expressly enacted by statute,<sup>8</sup> this period must be comprised in the same session,<sup>9</sup> a prorogation or dissolution being conclusive of such proceedings or business pending at the time (see p. 50).

<sup>1</sup> 7 Edw. VII. c. 9, s. 4 (3).

<sup>2</sup> 33 & 34 Vict. c. 75, s. 97. See also 34 & 35 Vict. c. 63, s. 2, under which a copy of any application for a charter for the foundation of a college or university referred for consideration and report to a committee of the privy council shall, with a copy of the charter applied for, be laid before both houses of Parliament for a period of not less than thirty days before any such report shall be submitted to his Majesty.

<sup>3</sup> Military Manœuvres Orders in Council, 60 & 61 Vict. c. 43, s. 1 (3), 135 L. J. 112, 158 C. J. 181.

<sup>4</sup> 38 & 39 Vict. c. 77, s. 25; 1 Edw. VII. c. 22, ss. 84, 126 (3); 157 C. J. 348.

<sup>5</sup> 40 & 41 Vict. c. 48, s. 50; *ib.* c. 55, s. 1.

<sup>6</sup> See 40 & 41 Vict. c. 57, s. 69; 2 Edw. VII. c. 42, s. 11 (8), &c.

<sup>7</sup> Letter from the Clerk of the house to the secretary of the Home Office, 23rd March, 1866 (No. 36720-45). In some cases the prescribed period is a certain number of days "during which the house is sitting," *e.g.* 61 & 62 Vict. c. 41, s. 2 (2).

<sup>8</sup> See University Act, 40 & 41 Vict. c. 48, s. 50.

<sup>9</sup> 311 H. D. 3 s. 852.

Both houses have taken steps to safeguard their control over the authorities making these rules and orders. The House of Lords has ordered that schemes under an act required to be laid for a prescribed number of days before being sanctioned by order in council are to be laid in full.<sup>1</sup> In the House of Commons any proceedings under a statute taken within the prescribed period are exempted from interruption under standing order No. 1 (see p. 200), but this exemption does not extend to the case of orders or regulations which may be required to be laid before Parliament, but in the case of which the statute does not prescribe any proceedings of objection or give any effect to an objection taken by either house.<sup>2</sup> If such a paper be laid in dummy the time during which proceedings under a statute might be taken has been held by the Speaker to run from the day upon which a full, though not necessarily a printed, copy of the paper was available for members.<sup>3</sup>

The method by which either house of Parliament signifies its disapproval, or proposes an alteration, of these orders and regulations should, unless otherwise directed by statute, be the presentation of an address to his Majesty (see p. 545).

<sup>1</sup> 132 L. J. 107.

<sup>3</sup> 69 Parl. Deb. 4 s. 625. 647; 96 ib.

<sup>2</sup> 71 Parl. Deb. 4 s. 222; 96 ib. 1009; 135 ib. 807.

1007; 6 H. C. Deb. 5 s. 712. 1372; 17 ib. 1315.

## CHAPTER XXIV.

## ISSUE OF WRITS AND TRIAL OF CONTROVERTED ELECTIONS.

Purport  
of the  
chapter.

THE law of elections, as declared by various statutes,<sup>1</sup> by the decisions of committees of the House of Commons, and of election judges, has become a distinct branch of the law of England : but as the issue of writs, and other matters concerning the seats of members, form an important part of the functions of the House of Commons, an outline of these proceedings, apart from the general law in reference to elections, cannot be omitted.

Issue of  
writs.

Whenever vacancies occur in the House of Commons from any legal cause, after the original issue of writs for a new Parliament by the Crown, writs are issued out of chancery by a warrant from the Speaker, which he issues, when the house is sitting, upon the order of the House of Commons. The causes of vacancy are the death of members or their succession to a peerage, the acceptance of office under the Crown, the elevation of members to the peerage, bankruptcy, lunacy, the establishment of any other legal disqualification for sitting and voting in the House of Commons, and the determination of election judges that elections or returns are void.

Vacancies  
during a  
session.

When the house is sitting, and the death of a member, his elevation to the peerage,<sup>2</sup> or other cause of vacancy, is known, Mr. Speaker is ordered by the house, upon a motion made by any member, to issue his warrant to the Clerk of the Crown for a new writ for the place represented by the member whose seat is thus vacated. But where a vacancy has occurred prior to, or immediately after, the first meeting of a new Parliament, the writ will not be issued until the time for presenting election petitions has expired (see p. 581).<sup>3</sup> Nor will a

<sup>1</sup> In 1850 there were upwards of 240 statutes relating to elections, exclusive of Acts for the trial of controverted elections, some few of which have since been repealed. See the author's pamphlet on the Consolidation of the Election Laws, 1850.

<sup>2</sup> See 26 H. D. 3 s. 839, 11th March, 1835 ; 2 Hatsell, 65, *n.*, 393-397.

<sup>3</sup> In 1868 a change of ministry took place before the meeting of the new Parliament on December 10th. Writs were issued for several of the new ministers on the 15th ; but for those who had been re-

writ be issued, if the seat which has been vacated be claimed on behalf of another candidate. In December, 1852, several members against whose return election petitions were pending accepted office under the Crown. After much consideration, it was agreed that where a void election only was alleged, a new writ should be issued; <sup>1</sup> and again, in 1859 and in 1880, the same rule was adopted.<sup>2</sup> Where the seat is claimed, it has been ruled that the writ should be withheld until after the trial of that claim,<sup>3</sup> or until the petition has been withdrawn.<sup>4</sup> In 1859, Viscount Bury accepted office under the Crown, while a petition against his return for Norwich, on the ground of bribery, was pending; and, as his seat was not claimed, a new writ was issued. Being again returned, a petition was presented against his second election, claiming the seat for another candidate. The petition against the first election came on for trial, and the committee reported that the sitting members, Lord Bury and Mr. Schneider, had been guilty, by their agents, of bribery at that election. By virtue of that report, Lord Bury, under the Corrupt Practices Prevention Act, became incapable of sitting or voting in Parliament, or, in other words, ceased to be a member of the house; but as a petition against his second return, claiming the seat, was then pending, a new writ was not issued.<sup>5</sup> This position of affairs illustrated the propriety of issuing the writ, in the first case, on the acceptance of office by Lord Bury, as the rights of all parties were nevertheless secured. On the meeting of a new Parliament, in November, 1852, the seat of a deceased member was claimed: but the petition was withdrawn the day after the expiration of the time for receiving election petitions, and the writ was immediately issued.<sup>6</sup> The claim of one seat for a constituency which returns two members does not interfere with the issue of a writ, on a vacancy occurring in the other seat.<sup>7</sup>

If a member becomes a peer by descent, a writ is usually moved Vacancy  
by peer-  
age.

turned for counties at a somewhat later date, writs were not issued until the 29th. And again, in 1874, after another change of ministry, writs were not issued for Buckinghamshire, and some other counties, for several days after the issue of writs for the boroughs, and for some counties where the returns had been made early.

<sup>1</sup> Southampton and Carlow writs, 29th Dec. 1852.

<sup>2</sup> Sandwich and Norwich writs, 22nd

June, 1859, 154 H. D. 3 s. 450. 454; Chester writ, 3rd May, 1880, 135 C. J. 125.

<sup>3</sup> Athlone Election, 1859.

<sup>4</sup> Louth Election (Mr. Chichester Fortescue), 1866.

<sup>5</sup> 155 H. D. 3 s. 865.

<sup>6</sup> Durham Election (Mr. Grainger), 108 C. J. 161.

<sup>7</sup> Lichfield writ (Sir G. Anson), 1841, 96 C. J. 526. 566; First Durham Election petition, 1852-53, 108 ib. 151.

Peer by  
descent.

soon after the death of his ancestor is known ;<sup>1</sup> though, occasionally, some delay occurs in obtaining the writ of summons, which ought strictly to precede the issue of the writ,—that proceeding being founded upon the alleged fact that the member has been called up to the House of Peers.<sup>2</sup> On the 15th February, 1809, the house being informed that no writ of summons had been issued to General Bertie, calling him to the House of Peers, as Earl of Lindsey, ordered a supersedeas to the writ which had been issued for the borough of Stamford.<sup>3</sup> On the 10th January, 1811, a new writ was issued in the room of Lord Dursley, “now Earl of Berkeley,” without stating that he was called up to the House of Peers. His claim to the Berkeley peerage, however, not being admitted by the Lords, he afterwards sat as Colonel Berkeley, until created Lord Seagrave in 1831.<sup>4</sup> The same rule, however, does not extend to a peer of Scotland, to whom no writ of summons is issued. On the 21st February, 1840, a new writ was issued for Perthshire, in the room of Viscount Stormont, “now Earl of Mansfield, and Viscount Stormont in the kingdom of Scotland,” though it was allowed on all hands that no writ of summons had then been issued to his lordship, in respect of his English peerage.<sup>5</sup> And again, in 1861, a new writ was issued for Aberdeenshire, in the room of Lord Haddo, “now Earl of Aberdeen in the peerage of Scotland,” before he had received his writ of summons in respect of his English peerage.<sup>6</sup>

Peer by  
creation.

If a member be created a peer, his seat is not vacated until the letters patent conferring the dignity have passed the great seal.<sup>7</sup>

<sup>1</sup> If a member on succeeding to a peerage delays to apply for a writ of summons the House of Commons will, if it thinks fit, inquire into his succession to the peerage and, on this being established, will order a new writ to be issued for the constituency of the member who has succeeded to the peerage; case of the Earl of Selborne, 150 C. J. 199. 205. 223, 33 Parl. Deb. 4 s. 1058; Report of Select Committees on House of Commons (Vacating of Seats) and Earldom of Selborne, Parl. Pap. (H. C.) sess. 1895, No. 272, p. iii., and No. 302, p. 3.

<sup>2</sup> 74 H. D. 3 s. 108 (Lord Abinger); 19th April, 1844, Earl Powis, 103 C. J. 162; Lord Panmure, 6th May, 1852, 107 ib. 193. See also First Report of Select Committee on House of Commons (Vacating of Seats), Parl. Pap. (H. C.), sess. 1895, No. 272, p. iii.

<sup>3</sup> 64 C. J. 49.

<sup>4</sup> 66 C. J. 31, 18 H. D. 1 s. 807, Colchester, ii. 306. 340.

<sup>5</sup> 95 C. J. 105, 52 H. D. 3 s. 435. When the lord chancellor is assured of a person's succession to a peerage by proofs of the late peer's burial and of the new peer's descent, &c., a writ of summons is issued, Select Committee on House of Commons (Vacating of Seats), Parl. Pap. (H. C.) sess. 1894, No. 278, pp. 18. 19. In some cases the customary delay in issuing a writ of summons to the collateral heir when a peer dies leaving a widow (ib. pp. 4. 19) has not been observed, Earl of Pembroke, 128 L. J. 15; Duke of Devonshire, 140 L. J. 101. 135.

<sup>6</sup> 116 C. J. 4.

<sup>7</sup> Sir H. Vivian, 13 Parl. Deb. 4 s. 332. 540.



When it is advisable to issue the writ without delay, in the case of a member created a peer, the member accepts the Chiltern Hundreds before his patent is made out (see p. 39).<sup>1</sup>

A new writ is moved as a matter of privilege, without notice (see p. 242);<sup>2</sup> though, it was resolved, 5th April, 1848, "that in all cases where the seat of any member has been declared void on the grounds of bribery or treating, no motion for the issue of a new writ shall be made without previous notice being given in the votes."<sup>3</sup> When such notice was dropped, it was required to be renewed like other dropped notices.<sup>4</sup> In 1853 and 1854, it was ordered that no such motion should be made without seven days' previous notice in the votes.<sup>5</sup> According to later usage, only two clear days' previous notice has been required; and such notices are appointed for consideration before the orders of the day and notices of motions.<sup>6</sup>

If doubts should arise concerning the fact of the vacancy, the order for a new writ should be deferred until the house may be in possession of more certain information; and if, after the issue of a writ, it should be discovered that the house had acted upon false intelligence, the Speaker will be ordered to issue a warrant for a supersedeas to the writ. Thus on the 29th April, 1765, a new writ was ordered for Devizes, in the room of Mr. Willey, deceased. On the 30th it was doubted whether he was dead, and the messenger of the great seal was ordered to forbear delivering the writ until further directions. Mr. Willey proved to be alive, and on the 6th May a supersedeas

<sup>1</sup> 135 C. J. 328, 162 ib. 308; 163 ib. 147. 160. 238. 292. As to the grant of the Chiltern Hundreds or Manor of Northstead to a member, who has succeeded to a peerage, see 150 C. J. 218; 166 ib. 179; 167 ib. 395. 495. 533; but see also Reports of Select Committees on House of Commons (Vacating of Seats), Parl. Pap. (H. C.) sess. 1894, No. 278, and sess. 1895, No. 272.

<sup>2</sup> For instances of new writs moved after the interruption of business, see 151 C. J. 133; 157 ib. 74; 160 ib. 300; at end of the orders of the day on a Friday before the adjournment of the house under standing order No. 3, 168 ib. 141. A new writ has also been moved as a matter of privilege at the conclusion of government business, although an order was in force directing the Speaker to adjourn the house without question put at the conclusion of government business each day, 150 C. J. 230. 389, 36 Parl. Deb. 4 s. 766-8;

on the motion of an unofficial member, 162 C. J. 448. See also p. 245, n. 7. An amendment to a motion for a new writ postponing the date of its issue has been ruled out of order, 36 Parl. Deb. 4 s. 768.

<sup>3</sup> 103 C. J. 432.

<sup>4</sup> 99 H. D. 3 s. 1289.

<sup>5</sup> 108 C. J. 315; 109 ib. 388.

<sup>6</sup> 112 C. J. 283; 130 ib. 23; 135 ib. 213; 137 ib. 20; 141 ib. 149; 148 ib. 14; 156 ib. 15; 161 ib. 226; 165 ib. 161; 166 ib. 49. See also debate on the issue of new writs, 31st Jan. 1893, 8 Parl. Deb. 4 s. 62. The usual resolution was not moved in session 1907, and the motion for a new writ for Worcester, of which one clear day's notice had been given, was made as a matter of privilege before the orders of the day were entered upon and was negatived, 162 C. J. 14, 169 Parl. Deb. 4 s. 317.

to the writ was ordered to be made out.<sup>1</sup> In several more recent cases, when the house has been misinformed, or a writ has been issued through inadvertence, the error has been corrected by ordering the Speaker to issue his warrant to the Clerk of the Crown to make out a supersedeas to the writ.<sup>2</sup> A new writ having been issued on the 6th July, 1880, for Berwick-upon-Tweed, in the room of Mr. Strutt, who had succeeded to the Belper peerage, a supersedeas to that writ was ordered on the 8th, as delays had arisen in completing the formalities incident to his being called to the upper house.<sup>3</sup>

By virtue of section 25 of the Succession to the Crown Act, 1707, whenever a member accepts an office of profit from the Crown, a new writ is ordered; and it is the usual practice to move the new writ when the member has kissed hands, instead of waiting for the completion of the formal appointment. On the 18th April, 1864, a writ being moved for Merthyr Tydvil, in the room of Mr. Bruce, who had accepted the office of vice-president of the committee of council for education, it was objected that not having been sworn a privy councillor, he was not qualified to hold the office: but it was conclusively shown by the attorney-general that his seat had been vacated by the acceptance of office, and that the writ ought to be issued as in the case of Mr. Lowe, who had accepted the same office, and of Mr. Hutt, who had accepted the office of vice-president of the board of trade before they had been sworn of the privy council.<sup>4</sup>

Issue of  
warrants  
by the  
Speaker  
during the  
recess.

Vacancies  
by death  
or  
peerage.

When vacancies occur by death, by elevation to the peerage, or by the acceptance of office, the law provides for the issue of writs during a recess, due to a prorogation or adjournment, without the immediate authority of the house, in order that a representative may be chosen without loss of time, by the place which is deprived of its member. By the Recess Elections Act, 1784 (24 Geo. III. sess. 2, c. 26), as amended by the Elections in Recess Act, 1863 (26 & 27 Vict. c. 20), on the receipt of a certificate, under the hands of two members, that any member has died, or that a writ of summons under the great seal has been issued to summon him to Parliament as a peer,<sup>5</sup>

<sup>1</sup> See 2 Hatsell, 80, *n.*; 16 Parl. Hist. 95; 30 C. J. 391, 404; see also cases of the city of Gloucester, 19th Dec. 1702, and of Mr. Vansittart, supposed to have been lost at sea, 17 Parl. Hist. 322; 33 C. J. 546.

<sup>2</sup> 64 C. J. 48; 81 *ib.* 223; 86 *ib.* 134. 182; 106 *ib.* 12 (Dungarvan writ).

<sup>3</sup> 135 C. J. 280, 286, 253 H. D. 3 s. 1918.

<sup>4</sup> 174 H. D. 3 s. 1196, 1287.

<sup>5</sup> See the form of the certificate in Appendix V. No writ of summons being directed to a Scotch or Irish peer, this Act does not extend to such cases; Marquess of Tweeddale, Jan. 1879.

either during the recess or previously thereto, the Speaker is required to give notice forthwith in the *London Gazette* (which is to be acknowledged by the publisher); and after six days from the insertion of such notice,<sup>1</sup> to issue his warrant to the Clerk of the Crown to make out a new writ. The Speaker may not issue his warrant during the recess unless the return of the late member has been brought into the office of the Clerk of the Crown fifteen days before the end of the last sitting of the house; or unless the application is made so long before the next meeting of the house for despatch of business, that the writ can be issued before the day of meeting.<sup>2</sup> He may not issue a warrant in respect of any seat that has been vacated by a member against whose election or return a petition was depending at the last prorogation or adjournment.

Subject to the same provisions by the Election of Members during the Recess Act, 1858 (21 & 22 Viet. c. 110), as amended by the Elections in Recess Act, 1863, the Speaker is required, on the receipt of a certificate from two members, together with a copy of the *Gazette* containing the appointment, and a notification from the member himself, to issue his warrant for a new writ, during a recess, in the room of any member who, since the adjournment or prorogation, has accepted any office whereby he has, either by the express provision of any Act of Parliament or by any previous determination of the House of Commons vacated his seat<sup>3</sup> (see p. 34). If, however, it should appear doubtful whether such office has the effect of vacating the seat, the Speaker may reserve the question for the decision of the house.

By the Bankruptcy Act, 1883, s. 33, similar powers are given to the Speaker in the event of a seat having become vacant by the bankruptcy of a member, upon the issue of the certificate of the court, stating that the disqualification inflicted by the Act had not been removed (see p. 31).

A new writ for the election of a member to fill a seat which has become vacant under the procedure prescribed by the Lunacy (Vacating of Seats) Act, 1886, (see p. 28) could not apparently be issued during a recess.

<sup>1</sup> In the calculation of the six days, the day on which the notice appeared in the *Gazette*, and any intervening Sunday, are reckoned; i.e. upon notice in a Tuesday's *Gazette*, the writ is issued on the following Monday.

<sup>2</sup> That is to say, the six days' provision (see note 1) must have been complied with.

<sup>3</sup> See the form of the certificate in Appendix V.

Question affecting the seat of a member.

Speaker's appointment of members.

Whenever any question is raised affecting the seat of a member and involving matters of doubt, either in law or fact, it is customary to refer it to the consideration of a committee.<sup>1</sup>

At the beginning of each Parliament the Speaker is required to appoint a certain number of members, not exceeding seven and not less than three, to execute his duties in reference to the issue of writs, in case of his own death, the vacation of his seat, or his absence from the realm. This appointment stands good for the entire Parliament, unless the number should be reduced to less than three; in which case the Speaker is required to make a new appointment, in the same manner as before.<sup>2</sup> This appointment is ordered to be entered in the journals, and published in the *London Gazette*; and the instrument is to be preserved by the Clerk of the house, and a duplicate by the Clerk of the Crown.

Issue of writs.

For any place in Great Britain, the Speaker's warrant is directed to the Clerk of the Crown in Chancery: and for any place in Ireland, to the Clerk of the Crown and Hanaper in Ireland.<sup>3</sup> On the receipt of the Speaker's warrant, the writ is issued by the Clerk of the Crown, and transmitted through the post-office in pursuance of the provisions of the Parliamentary Writs Act, 1813 (53 Geo. III. c. 89).<sup>4</sup> Neglect or delay in the delivery of the writ, or any other violation of the Act, is a misdemeanour; and in the event of any complaint being made the house will also inquire into the circumstances.<sup>5</sup> In 1840, two writs were issued for Perthshire, instead of one, and the Clerk of the Crown was examined in relation to the occurrence.<sup>6</sup>

At the end of the session in 1894 two writs were issued on the same day for the borough of Leicester, a constituency returning two members, as the sitting members had accepted the Chiltern Hundreds and Manor of Northstead. The returning officer held a single election to fill the vacancies. His action and the validity of the returns made

<sup>1</sup> *E.g.* case of Mr. Wynn (Stewardship of Denbigh), 94 C. J. 58; of Mr. Whittle Harvey, registered hackney carriages, *ib.* 29; of Mr. Hawes, 103 *ib.* 388 (see p. 158); of Baron Rothschild, as a government contractor, 110 C. J. 325 (see p. 31); of Sir Bryan O'Loughlen, 133 C. J. 376 (see p. 34, *n.* 5); of member holding a contract with the Secretary of State for India in Council, 167 C. J. 419 (see p. 30); of succession to a peerage (Earldom of Selborne), 150 C. J. 205 (see p. 572, *n.*); of the holding of a single election in a case

of two writs being issued, 150 C. J. 61 (see above); and of the grant of the Chiltern Hundreds to a member who has succeeded to a peerage, 149 C. J. 373 (see p. 573, *n.*).

<sup>2</sup> 24 Geo. III., sess. 2, c. 26, ss. 5, 6.

<sup>3</sup> 103 C. J. 195.

<sup>4</sup> By 37 & 38 Vict. c. 81, the duties of the pursuivant of the great seal in relation to writs were transferred to the messenger of the great seal.

<sup>5</sup> Glasgow writ, 1837, 92 C. J. 410, 418.

<sup>6</sup> 95 C. J. 122, 127.

by him were raised as a matter of privilege at the commencement of the next session and a select committee was appointed to inquire into the matter. The committee reported that the course pursued by the returning officer was erroneous in point of procedure and that the election was not duly held, but recommended that the house should take no action in the matter as the returning officer had acted in the exercise of an honest judgment for the convenience, and with the consent, of all the parties directly concerned in the election, and without any intention of influencing the result.<sup>1</sup>

If any error should appear in the return to a writ, such as a mistake in the name of the member returned,<sup>2</sup> or in the date of the return,<sup>3</sup> or in the division of the county for which the return is made,<sup>4</sup> evidence is given of the nature of the error, either by a member of the house, or by some other person who was present at the election or is otherwise able to afford information; and the Clerk of the Crown is ordered to attend and amend the return. On the 18th August, 1854, the Mayor of Barnstaple annexed to the writ, which he returned to the Clerk of the Crown, a certificate instead of an indenture; and on being made aware of his error he forwarded on the 25th August, an indenture dated on that day. As this date differed from that of the return, the Clerk of the Crown felt unable to annex the indenture to the writ, but made a special certificate to the house of the facts. This was considered on the 13th December, when, by the order of the house, the members for Barnstaple were called to the table, and took the oath.<sup>5</sup>

If no return be made to a writ in due course, the Clerk of the Crown is ordered to attend and explain the omission; when, if it should appear that the returning officer, or any other person, has been concerned in the delay he will be summoned to attend the house;

Correction of error in return.

Failure to make return to writ.

<sup>1</sup> 149 C. J. 401; 150 ib. 61; 30 Parl. Deb. 4 s. 54; Report of Select Committee on Leicester writs, Parl. Pap. (H. C.) sess. 1895, No. 247, p. vii. On the 27th June, 1899, one writ was moved to fill the double vacancy in the representation of Oldham, 154 C. J. 291.

<sup>2</sup> Newport (Hants), 1831, Mr. Hope Vere, 86 C. J. 578; Kirkcaldy return, 1875, Sir George Campbell, 130 ib. 165; Perth county return, 1878, Colonel Moray, 133 ib. 53; Poole, 139 ib. 175; Mid Antrim, 141 ib. 8; Longford, 142 ib. 54; Birmingham, 144 ib. 149; Kirkcaldy, 147

ib. 104; Monaghan (north and south divisions), 150 ib. 348; Buckingham (northern division), 166 ib. 6. In the last case the member himself directed the attention of the house to the error.

<sup>3</sup> Carlow county, 1841, "November" being inserted instead of "December," 96 C. J. 3.

<sup>4</sup> Northampton county, 1846, 101 C. J. 207; Worcester county (eastern division), 1859, 114 C. J. 74, 152 H. D. 3 s. 855.

<sup>5</sup> 110 C. J. 4. 7, Parl. Pap. (H. C.) sess. 1854-55, No. 2.

and such other proceedings will be adopted as the house may think fit.<sup>1</sup>

In the course of the general election of December, 1910, the writ for the borough of Portsmouth was mislaid by the returning officer, so that he was unable to endorse the writ with the names of the members who had been returned. The returning officer made a statutory declaration to this effect and certified the names of the members returned. This declaration was sent by the Clerk of the Crown to the Speaker, who informed the house of its contents. An instruction was given by the house to the Clerk of the Crown to receive the names mentioned in the returning officer's statutory declaration as if they had been endorsed on the writ and to amend his certificate to the house (*i.e.* the Return Book, see p. 158) accordingly.<sup>2</sup>

Members  
returned  
for two  
places.  
- Sessional  
orders,  
Appendix  
I.

At the commencement of each session, the house agrees to resolutions dealing with the case of members who are returned for two or more places in any part of the United Kingdom. This order regulates the manner of choosing for which place a member will sit when he has been returned for more than one, and his withdrawal from the house, if debate arises upon the matter of his election (see p. 310). When the time limited for presenting petitions to the court against his return has expired, and no petition has been presented, he is required to make his election within a week, in order that his constituents may no longer be deprived of a representative.<sup>3</sup> This election may either be made by the member in his place<sup>4</sup> or by a letter addressed to the Speaker.<sup>5</sup> When a petition has been presented against his return for one place only, he cannot elect to serve for either.<sup>6</sup> He cannot abandon the seat petitioned against, which may be proved to belong of right to another, and thus render void an election which may turn out to have been good in favour of some other candidate; neither can he abandon the other seat; because if it should be proved that he is only entitled to sit for one, he has no election to make, and cannot give up a seat without having incurred some legal disqualification,

<sup>1</sup> Waterford writ, 1806, 61 C. J. 169. 175, 6 H. D. 1 s. 536. 562. 751; Great Grimsby, 1831, 86 C. J. 758. 762, &c., 6 H. D. 3 s. 95. 159. 294. 460.

<sup>2</sup> 166 C. J. 6.

<sup>3</sup> 103 C. J. 99. 100.

<sup>4</sup> Mr. O'Connell, 1842, 97 C. J. 302; Mr. Gathorne Hardy, 1866, 121 ib. 104;

also 141 ib. 28; 142 ib. 4.

<sup>5</sup> 103 C. J. 99; 129 ib. 12; 135 ib. 128; also 141 ib. 9. 26. 318; 142 ib. 5; 147 ib. 413; 150 ib. 341; 151 ib. 4; 165 ib. 6.

<sup>6</sup> Case of Mr. O'Connell, 1841, 96 C. J. 564, 59 H. D. 3 s. 503; Mr. Sexton, 1886, 308 ib. 168.

such as the acceptance of office, or bankruptcy.<sup>1</sup> Upon this principle, on the 24th May, 1842, Mr. O'Connell, who had been chosen for the counties of Cork and Meath, elected to sit for the former, directly after the report of the election committee, by which he was declared to have been duly elected for that county.<sup>2</sup>

When there is a double return, there are two certificates endorsed on the writ,<sup>3</sup> and both the names are entered in the return books. Both members may therefore claim to be sworn, and to take their seats :<sup>4</sup> but after the election of the Speaker, neither of them can vote until the right to the seat has been determined ; because both are, of course, precluded from voting where one only ought to vote ; and neither of them has a better claim than the other. The practice of making such returns, though apparently prohibited in England by the 7 & 8 Will. III. c. 7, was sanctioned by the law and usage of Parliament.<sup>5</sup> In Scotland the making of double returns was directed by the Scotch Reform Act, 1832 (s. 33). In Ireland, on the other hand, a double return was expressly prohibited.<sup>6</sup> By the Ballot Act, 1872 (35 & 36 Vict. c. 93, s. 2), the law of the United Kingdom regarding double returns is assimilated.<sup>7</sup> Where there is an equality of votes between any candidates, and the addition of a vote would entitle a candidate to be declared elected, the returning officer, if a registered elector, may give such additional vote, but shall not, in any other case, be entitled to vote at an election for which he is returning officer.<sup>8</sup>

The house, also, agrees to resolutions regarding the votes of peers<sup>9</sup> and bribery at parliamentary elections.

Votes of  
peers and  
bribery.  
Sessional  
orders,  
Appendix  
1.

<sup>1</sup> At the general election of December, 1910, Mr. Hazleton was returned for North Galway and North Louth. As a petition was presented against his return for the latter place, he did not make any election. As a result of the petition his election for North Louth was declared to be void, 166 C. J. 64.

<sup>2</sup> 97 C. J. 302.

<sup>3</sup> The ancient form of an indenture was abolished by the Ballot Act, 1872, 1st sch. s. 44.

<sup>4</sup> Report, Oaths of Members, Parl. Pap. (H. C.) sess. 1847-8, No. 256, p. 3. In 1852, three members were returned for Knaresborough. They were all sworn at the table, 8th Nov., and directed by Mr. Speaker to withdraw below the bar. In 1859, there were double returns for

Knaresborough and Aylesbury, when the members were sworn in the same way. So also in May, 1878, when there was a double return for South Northumberland.

<sup>5</sup> See Helston Election Petition Report, 1866, 121 C. J. 436, 486.

<sup>6</sup> 35 Geo. III. c. 29, s. 13, and 4 Geo. IV. c. 55, s. 68, repealed by the Ballot Act, 1872.

<sup>7</sup> Rogers on Elections, i. 212.

<sup>8</sup> In the South Northumberland election, 1878, the sheriff declined to give his casting vote, and made a double return.

<sup>9</sup> See debates in the Lords, 128 H. D, 3 s. 791 ; 151 ib. 926, 927 ; and opinion of the attorney-general, 275 ib. 121. In 1872, the legal question of the right of peers to vote, or to be entered upon the register of voters, was conclusively decided by the Court of Common Pleas. The

Inter-  
ference of  
peers and  
ministers.

Until the year 1910 the Commons resolved that it was "a high infringement of the liberties and privileges of the commons of the United Kingdom for any lord of Parliament, or other peer or prelate, not being a peer of Ireland at the time elected, and not having declined to serve for any county, city, or borough of Great Britain, to concern himself in the election of members to serve for the Commons in Parliament; except only any peer of Ireland, at such elections in Great Britain respectively where such peer shall appear as a candidate, or by himself, or any others, be proposed to be elected; or for any lord-lieutenant or governor of any county to avail himself of any authority derived from his commission, to influence the election of any member to serve for the Commons in Parliament."<sup>1</sup>

The motion was limited by amendment in 1910 to the intervention in elections of a lord-lieutenant. In session 1911 it was moved in this limited form and negatived, but in the following year it was agreed to.<sup>2</sup> Since that year it has not been moved. On the 10th

Earl of Beauchamp and the Marquess of Salisbury, having had their names struck off the register by the revising barrister, appealed to the Court of Common Pleas. The court unanimously decided that, in law, as derived from authorities and from the determination of election committees, as well as by resolutions of the House of Commons, peers had no right to vote: and the appeal was accordingly dismissed with costs, 15th Nov. 1872, 8 L. R. C. P., 245. This decision was followed in the case of a peer who claimed a right to vote at an election of a member for the University of Cambridge, Bristol, Marquis of, *v.* Beck (1907), 96 L. T. 55, 71 J. P. 99, 23 T. L. R. 224. See also the Report of the Committee of Privileges in the case of the Earl of Roden, who before his succession to the title had been placed on the parliamentary register for the South Down division of County Down, and voted at an election in that division after succeeding to the title, as his name remained on the register, Parl. Pap. (H. C.) sess. 1911, No. 153.

<sup>1</sup> 27th April, 1802, 57 C. J. 376, founded on orders 10th December, 1614, 2 ib. 337; 15th February, 1700, 13 ib. 333; 10th November, 1707, 15 ib. 395; 6th August, 1714, 18 ib. 5. In February, 1868, two bishops (one not being a lord of Parliament) were on the committee of one of the candidates for the University of Cambridge; but on notice being taken of the circumstance, they withdrew, 190 H. D. 3 s. 801. Doubts were raised whether the resolution embraced a bishop not being a lord of Parlia-

ment: but it is clear that, having been agreed to in its present form in 1801 and 1802, it was intended to apply to the Irish peers and bishops not having seats in Parliament, under the Act of Union; and extended to English bishops created by later statutes not yet summoned to the Lords, 56 C. J. 25; 57 ib. 376. See cases of Bishop of Carlisle, 16 ib. 548; of Duke of Leeds, 68 ib. 344, 26 H. D. 1 s. 796. 989; 83 H. D. 3 s. 1167; West Gloucester election, and precedents cited by the attorney-general in regard to proceedings of the house against peers who have interfered in elections, 95 ib. 1071; Stamford borough case, 98 ib. 932. 976; Earl of Cadogan, 250 ib. 1198; Lord Rosebery, 22 Parl. Deb. 4 s. 588; Duke of Bedford and Lord Carrington, 66 ib. 872; the Lord Chancellor, 70 ib. 1125; Duke of Devonshire, 72 ib. 311; Lord Alington, 141 ib. 71; Duke of Norfolk (referred to Committee of Privileges), 164 C. J. 319, Parl. Pap. (H. C.) sess. 1909, No. 281. For complaints made of lord-lieutenants interfering in elections, see Duke of Chandos, Lord-Lieutenant of Southampton, 37 C. J. 507. 513. 538. 557; Duke of Bolton, a peer of Parliament, in the same election, 37 ib. 530; Earl of Aberdeen, Lord-Lieutenant of Aberdeenshire (referred to Committee of Privileges), 166 C. J. 7, Parl. Pap. (H. C.) sess. 1911, No. 153. Use of peers' carriages at elections, 142 C. J. 358, Parl. Pap. (H. C.) sess. 1887, No. 50; Parl. Pap. (H. L.) sess. 1888, No. 204, 317 H. D. 3 s. 363. 1489.

<sup>2</sup> 165 C. J. 6; 166 ib. 7; 167 ib. 3.



December, 1779, the Commons resolved that it was "highly criminal in any minister or ministers, or other servants under the Crown of Great Britain, directly or indirectly to use the powers of office in the election of representatives to serve in Parliament, &c." <sup>1</sup>

Before the year 1770, controverted elections were tried and determined by the whole House of Commons, as mere party questions, upon which the strength of contending factions might be tested. <sup>2</sup> Trial of controverted elections.

In order to prevent so notorious a perversion of justice, the house consented to submit the exercise of its privilege to a tribunal constituted by law, which, though composed of its own members, should be appointed so as to secure impartiality, and the administration of justice according to the laws of the land, and under the sanction of oaths. The principle of the Grenville Act, and of others which were passed at different times since 1770, was the selection by lot of committees for the trial of election petitions. Partiality and incompetence were, however, generally complained of in the constitution of committees appointed in this manner; and in 1839, an Act was passed establishing a new system, upon different principles, increasing the responsibility of individual members, and leaving but little to the operation of chance. This principle was maintained, with partial alterations of the means by which it was carried out, until 1868, when the jurisdiction of the house in the trial of controverted elections was transferred by statute to the courts of law. Constitution of committees under the Grenville Act.

By the Parliamentary Elections Act, 1868, the Parliamentary Elections and Corrupt Practices Act, 1879 and the Supreme Court of Judicature Act, 1881 (44 & 45 Vict. c. 68), the trial of controverted elections is confided to two judges, selected as regards England, from the King's Bench Division of the High Court of Justice; as regards Ireland, from the Court of Common Pleas at Dublin; and as regards Scotland, from the Court of Session. Petitions complaining of undue elections and returns are presented to these courts instead of to the House of Commons, as formerly, within twenty-one days after the returns to which they relate have been made to the Clerk of the Crown in Chancery, <sup>3</sup> and are tried by two judges of those Trial of election petitions by the judges.

<sup>1</sup> 37 C. J. 507.

<sup>2</sup> *E.g.* Sir Robert Walpole's resignation (1741) in consequence of an adverse vote upon the Chippenham Election petition; see also 1 Cav. Deb. 476. 505; May, Const. Hist. i. 243.

<sup>3</sup> 31 & 32 Vict. c. 125, s. 6. By sec. 49, in reckoning time for the purposes of this Act, Sunday, Christmas-day, and any day set apart for a public fast or thanksgiving, shall be excluded; and it has been held that Sundays are excluded

courts, within the county or borough concerned. The house has no cognizance of these proceedings until their termination ; when the judges certify their determination, in writing, to the Speaker, which is final to all intents and purposes.<sup>1</sup> The judges are also to report whether any corrupt practices <sup>2</sup> have been committed with the knowledge and consent of any candidate ; the names of any persons proved guilty of corrupt practices ; and whether corrupt practices have extensively prevailed at the election.<sup>3</sup> They may also make a special report as to other matters which, in their judgment, ought to be submitted to the house. Provision is also made for the trial of a special case, when required, by the court itself, which is to certify its determination to the Speaker. The judges are also to report the withdrawal of an election petition to the Speaker, with their opinion whether the withdrawal was the result of any corrupt arrangement. By sec. 5 of the Corrupt and Illegal Practices Prevention Act, 1883, the election court is directed also to report to the Speaker whether candidates at elections have been guilty by their agents of corrupt practices.

Judges' certificates and reports.

All such certificates and reports are communicated to the house by the Speaker, and are treated like the reports of election committees under the former system. They are entered in the journals ; and orders are made for carrying the determinations of the judges into execution. A report that corrupt practices have extensively prevailed is equivalent to the like report from an election committee, for all the purposes of the Election Commissioners Act, 1852 (15 & 16 Vict. c. 57) for further inquiry into such corrupt practices.<sup>4</sup> Where there is a double return (see p. 579), and notice is given by

from the computation of twenty-one days. *Pease v. Norwood* (1869), *Pegler v. Gurney and Hoare* (1869), 4 L. R. C. P. 235. The "return" is not made until the writ, duly endorsed by the returning officer, has reached the hands of the Clerk of the Crown so that he may act upon it, *Hurdle v. Waring* (1874), 9 L. R. C. P. 435.

<sup>1</sup> On the 1st June, 1874, Mr. O'Donnell (lately member for Galway) appeared at the bar and claimed to make a statement before the certificate of the judge, by which he was unseated, was read : but the Speaker informed him that it appeared from the judge's certificate that he was disqualified from sitting, and that he

therefore was not entitled to be heard, 129 C. J. 184.

<sup>2</sup> For the application to illegal practices of the statutory provisions relating to corrupt practices, see 46 & 47 Vict. c. 51, ss. 11. 12.

<sup>3</sup> The Parliamentary Elections Act, 1868, s. 24, directs that notes of evidence given at an election trial shall be taken by the shorthand writer of the House of Commons (see p. 184), whose transcript shall be sent to the Speaker with the judge's certificate. The shorthand writer does not report proceedings on the withdrawal of a petition.

<sup>4</sup> 31 & 32 Vict. c. 125, s. 15.

one of the parties that he does not intend to defend his return, a report is made to the Speaker, and the return is amended accordingly. This Act also makes further provision for the punishment of corrupt practices at elections.

A few words will suffice to explain the proceedings of the house, so far as its judicature is still exercised in matters of election. It being enacted by sec. 50 of the Parliamentary Elections Act, 1868, that "no election or return to Parliament shall be questioned except in accordance with the provisions of this Act," doubts were expressed whether this provision would not supersede the jurisdiction of the house, in determining questions affecting the seats of its own members, not arising out of controverted elections. It is plain, however, that this section applied to the questioning of returns by election petitions only. Under the procedure in force before the Parliamentary Elections Act, 1868, when returns were questioned by petition, the matter was determined by the statutory tribunal; otherwise the house uniformly exercised its constitutional jurisdiction. This continues to be the position of the house, although the judicature of its election committees has been transferred to the judges.

In the autumn of 1868, an election petition had been presented to the Court of Session in Scotland, complaining of the election of Sir Sydney Waterlow for the county of Dumfries, on the ground of his holding a government contract. In the ensuing session, however, the petition having been withdrawn, a select committee was appointed to "consider whether Sir Sydney Waterlow is disqualified from sitting and voting as a member of this house, under the statute 22 Geo. III. c. 45;" and on receiving the report of this committee, which declared him disqualified, a new writ was issued for the county of Dumfries.<sup>1</sup> Thus the very same question which might have been determined, upon petition, by an election judge, was adjudged by the house itself. The house is, in fact, bound to take notice of any legal disabilities affecting its members, and to issue writs in the room of members adjudged to be incapable of sitting.<sup>2</sup> In 1870, O'Donovan Rossa, a convict then in prison, and sentenced to penal servitude for life, for felony under the Treason-Felony Act, had been returned as member for the county of Tipperary. The house took action, and ordered the issue of a new writ.<sup>3</sup> The case of John Mitchel, in 1875, further illustrates the position of the house in relation to elections

<sup>1</sup> 124 C. J. 12. 43. 82. 88.

<sup>2</sup> 94 C. J. 48; 103 ib. 102.

<sup>3</sup> 125 C. J. 27, 199 H. D. 3 s. 122; and see *supra*, p. 33, n. 2.

and the legal disqualifications of its members. John Mitchel had been returned for the county of Tipperary without a contest. No question could, therefore, arise as to the election or return, the sole matter for determination being the qualification of the member. It was notorious that he was an escaped convict and had not completed the term of transportation to which he had been sentenced. The facts of the case were proved, and his legal disqualification was clearly established to the satisfaction of the house.<sup>1</sup> A new writ was accordingly issued and John Mitchel was again returned. But, on this occasion, there had been a contest, and the house therefore left the merits of the election and return to be determined under the Parliamentary Elections Act. Mr. Moore, the other candidate, having given due notice of the disqualification, proved his claim to the seat and the return was amended accordingly.<sup>2</sup> On the 28th February, 1882, the house resolved that Michel Davitt, having been adjudged guilty of felony and sentenced to penal servitude for fifteen years, and being then imprisoned under such sentence, was incapable of being elected or returned as a member.<sup>3</sup> A similar resolution was agreed to on the 20th August, 1895, in the case of John Daly, who had been adjudged guilty of felony and sentenced to penal servitude for life; while on the 2nd March, 1903, a new writ was ordered for the city of Galway in the room of Arthur Alfred Lynch, who had been adjudged guilty of high treason.<sup>4</sup> In such cases as these, the jurisdiction and duty of the house cannot be questioned, as the incapacity of a felon is expressly declared by statute.<sup>5</sup> A petition relating to an election, but not questioning the return of the sitting member, may properly be received.<sup>6</sup>

Proceedings of house upon determination of election trials.

Where it has been determined that the sitting member was not duly elected,<sup>7</sup> and that some other candidate was duly elected, and ought to have been returned, the Clerk of the Crown is ordered to

<sup>1</sup> Under 9 Geo. IV. c. 32, s. 3; 9 Geo. IV. c. 54, s. 33.

<sup>2</sup> 130 C. J. 49, 52, 239, 222 H. D. 3 s. 493.

<sup>3</sup> 137 C. J. 77.

<sup>4</sup> 150 C. J. 353; 158 ib. 40.

<sup>5</sup> 33 & 34 Vict. c. 23, s. 2. See 266 H. D. 3 s. 1842, and especially the speech of the attorney-general.

<sup>6</sup> 194 H. D. 3 s. 1185.

<sup>7</sup> No notice can be taken of a determination until reported to the house. On the 27th April, 1866, Mr. Mills,

member for Northallerton, had been declared not duly elected; but no report had been made to the house, and the division on the second reading of the Reform Bill was expected the same evening. As every vote was important, the question was canvassed whether Mr. Mills could vote. It was admitted that his vote could not be disallowed: but on taking counsel with his friends, he very properly desisted from voting.—Denison, 192.

attend, and amend the return,<sup>1</sup> by substituting the name of the duly elected candidate for the name of the other candidate.<sup>2</sup> In the case of a double return, the Clerk of the Crown is ordered to attend and amend the return, by rasing out the name of one of the parties, and what relates to him in the return.<sup>3</sup> When the election is void, a new writ is ordered, unless the house shall think fit to suspend its issue. In the case of the Wigton election, 1874, the judge reported that the Right Hon. John Young was duly elected : but it appearing that since his election he had been appointed a judge of the Court of Session, in Scotland, a new writ was issued.<sup>4</sup>

Where there have been special reports concerning bribery<sup>5</sup> or riots at elections ;<sup>6</sup> the conduct of returning officers ;<sup>7</sup> undue influence, and spiritual intimidation ;<sup>8</sup> the alteration of the poll ;<sup>9</sup> the absence, misconduct, or perjury of witnesses ;<sup>10</sup> defects or uncertainty in the law ;<sup>11</sup> the propriety of suspending the writ ;<sup>12</sup> or any other exceptional circumstances ;<sup>13</sup>—the house has taken such measures as were required by law or usage, or as appeared suitable to the occasion. It has been usual, in such cases, to order a copy of the judgment delivered by the judge, and the minutes of evidence, to be laid before the house.

By the Corrupt Practices Prevention Act, 1863 (26 & 27 Vict. c. 29), election committees were required to report whether corrupt practices had extensively prevailed, and consequent provision was made for the institution of prosecutions by the attorney-general. This duty is now laid by sec. 45 of the Corrupt and Illegal Practices Prevention Act, 1883, upon the public prosecutor, who, when informed that corrupt or illegal practices have prevailed in any election, shall, subject to the regulations under the Prosecution of

<sup>1</sup> An amendment to the question for the attendance of the Clerk of the Crown has been refused by the Speaker, 24 H. C. Deb. 5 s. 1253.

<sup>2</sup> Tipperary Election, 27th May, 1875, 130 C. J. 236 ; Evesham Election, 1881, 136 ib. 5 ; Londonderry City Election, 1887, 142 ib. 4 ; York, East Riding, Election, 1887, 142 ib. 5 ; Exeter Election, 1911, 166 ib. 162.

<sup>3</sup> 97 C. J. 203 ; 124 ib. 173 ; Montgomery Election, 1848, 103 ib. 218 ; Dumbartonshire Election, 1866, 121 ib. 156 ; South Northumberland Election, 1878, 133 ib. 333 ; Saint Andrew's District of Burghs Election, 1885, 141 ib. 46.

<sup>4</sup> 129 C. J. 187. 195.

<sup>5</sup> Peterborough, 1853, 108 C. J. 826.

<sup>6</sup> Drogheda petition, 1857, 112 C. J. 383 ; Limerick city petition, 1859, 114 ib. 338.

<sup>7</sup> Helston Election, 1866, 121 C. J. 436.

<sup>8</sup> Mayo petition, 1857, 112 C. J. 307 ; Galway County Election, 1872, 127 ib. 258.

<sup>9</sup> 114 C. J. 330. 350 ; 115 ib. 167.

<sup>10</sup> 115 C. J. 94. 167, &c.

<sup>11</sup> 93 C. J. 275 ; 97 ib. 198 ; 98 ib. 133 ; 103 ib. 511. 965.

<sup>12</sup> Beverley case, 1859, 114 C. J. 359.

<sup>13</sup> 112 C. J. 292. 295. 369. 385 ; 114 ib. 369 ; 121 ib. 288.

Special reports.

Extensive corrupt practices.

Offences Act, 1879, make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require; and thus the intervention of the house, in such cases, is rendered unnecessary by the direct operation of the law.

Writs suspended.

When general and notorious bribery and corruption have been proved to prevail in parliamentary boroughs, the house has suspended the issue of writs,<sup>1</sup> with a view to further inquiry, and proceedings for the ultimate disfranchisement of the corrupt constituencies by Act of Parliament.<sup>2</sup>

Commissions of inquiry.

A royal commission of inquiry under the Election Commissioners Act, 1852, may be appointed, upon the joint address of both houses of Parliament, to investigate the circumstances of an election, when an election committee or the judges who have tried an election petition have reported that corrupt or illegal practices extensively prevailed at the election or when the same allegation has been made in a petition to the House of Commons signed by two or more electors and presented within twenty-one days of the return or within fourteen days of the meeting of Parliament.<sup>3</sup> Addresses were agreed to in

<sup>1</sup> Liverpool, 1831, 86 C. J. 458. 493; Warwick, 1833, 88 ib. 611; 89 ib. 9. 579; Carrickfergus, 1833, 88 ib. 531. 599; Hertford, 1833, ib. 578. 649. In the last three cases, the writs were suspended until the dissolution in Dec. 1834. Meanwhile bills of disfranchisement, or for preventing bribery in these boroughs, were pending. Stafford, 1835; writ suspended until 1837, until there was no prospect of passing a disfranchisement bill; see debate, 13th Feb. 1837, on issue of writ, 90 ib. 262; 91 ib. 792. Sudbury; writ suspended from 14th April, 1842, till 1st Aug. 1843, 97 ib. 188. 467, &c.; Disfranchisement Act, 7 & 8 Vict. c. 53. Ipswich, 1842; writ suspended from 25th April until 1st Aug. 1842, 97 C. J. 221. 554. Yarmouth, 1848; writ suspended from 14th Feb. until 30th June, 103 ib. 213; freemen disfranchised by 11 & 12 Vict. c. 24. Harwich, 1848, 103 ib. 330. 702. In 1851, an Act was passed for inquiring into bribery at St. Alban's, 14 & 15 Vict. c. 106; and the borough was disfranchised by 15 & 16 Vict. c. 9. Barnstaple; writ suspended from 22nd April, 1853, until 11th Aug. 1854. Cambridge; writ suspended from 3rd March, 1853, until 11th Aug. 1854.

Canterbury; writ suspended from 22nd Feb. 1853, until 11th Aug. 1854. Wakefield and Gloucester; writs suspended from July, 1859, until 20th Feb. 1862. See 156 H. D. 3 s. 771; 157 ib. 1637; 161 ib. 247; 163 ib. 1070, &c. Norwich; writ suspended in 1875, 130 C. J. 247; Act passed in 1876, forbidding any election during the Parliament, 39 & 40 Vict. c. 72. Wigan Election, 1881; writ suspended until Nov. 1882; 136 C. J. 492; 137 ib. 172. 514. Worcester, 1906; writ not issued until 31st January, 1908, 161 C. J. 502; 162 C. J. 14; 163 ib. 17. On several other occasions, writs have been suspended for shorter periods until the printing of evidence; e.g. Nottingham, 1843; Harwich, 1848; and Clitheroe, 1853.

<sup>2</sup> Copies of disfranchisement bills are served upon the returning officer before the second reading, 99 C. J. 443; 103 ib. 366; 125 ib. 147. 223, 288; 131 ib. 325.

<sup>3</sup> 15 & 16 Vict. c. 57; 31 & 32 Vict. c. 125, ss. 15. 56; 46 & 47 Vict. c. 51, ss. 11. 12. Rogers on Elections, ii. 283. For the right of appeal from a decision of the Commissioners, see 46 & 47 Vict. c. 51, s. 38 (2); 162 C. J. 69.

the cases of Canterbury, Cambridge, Maldon, Barnstaple, Kingston-upon-Hull and Tynemouth, in 1853; Galway, in 1857; Gloucester and Wakefield, in 1859; Lancaster, Great Yarmouth, Reigate and Totnes, in 1866; Beverley, Bridgwater, Cashel, Sligo, Dublin and Norwich, in 1869; Norwich and Boston, in 1874; Boston, Canterbury, Chester, Gloucester, Knaresborough, Macclesfield, Oxford and Sandwich, in 1880; and Worcester, in 1906; and in 1869, commissioners were appointed, by statute, to inquire into corrupt practices reported by an election judge to have been committed by the freemen of Dublin.

In pursuance of the reports of election commissioners, by the Reform Act of 1867, the four corrupt boroughs of Lancaster, Great Yarmouth, Reigate and Totnes were disfranchised. In 1870, the boroughs of Bridgwater, Beverley, Sligo, and Cashel, and certain voters of the cities of Norwich and Dublin, were disfranchised by special Acts;<sup>1</sup> and in 1871, certain other voters of Norwich were disfranchised. In 1876, after the reports of two commissions, an Act was passed forbidding an election for Norwich until the end of the Parliament, and disfranchising several persons for a period of seven years, in Norwich and Boston.<sup>2</sup>

<sup>1</sup> 33 & 34 Vict. cc. 21. 25. 38. 54.

<sup>2</sup> 39 & 40 Vict. c. 72; see also the Acts 44 & 45 Vict. c. 42; 45 & 46 Vict. c. 68,

prohibiting elections for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford and Sandwich.

Bills  
founded  
on reports  
of commis-  
sioners.

## CHAPTER XXV.

IMPEACHMENT BY THE COMMONS. TRIAL OF PEERS. BILLS OF  
ATTAINDER.

Rarity of  
impeach-  
ments in  
modern  
times.

IMPEACHMENT by the Commons, for high crimes and misdemeanours beyond the reach of the law, or which no other authority in the state will prosecute, is a safeguard of public liberty, which happily, in modern times, is rarely called into activity; <sup>1</sup> as the times in which its exercise was needed—when the people were jealous of the Crown; when the Parliament had less control over prerogative; when courts of justice were impure; and when the Crown and its officers screened political offenders from justice,—have passed away.

Grounds  
of im-  
peach-  
ment.

Impeachments are reserved for extraordinary crimes and extraordinary offenders: but by the law of Parliament, all persons, whether peers or commoners, may be impeached for any crimes whatever.

Peers and  
com-  
moners  
liable to  
impeach-  
ment.

It was always allowed that a peer might be impeached for any crime, whether it were cognizable by the ordinary tribunals or not: but doubts have been entertained, upon the authority of the cases of Simon de Beresford, in the 4th Edward III., and of Fitzharris, in 1681, whether a commoner could be impeached for any capital offence.<sup>2</sup> The authority of the cases of Simon de Beresford and of Fitzharris has been superseded.<sup>3</sup> When on the 26th June, 1689, Sir Adam

<sup>1</sup> The earliest recorded instance of impeachment by the Commons was in the reign of Edward III., 1376. During the next four reigns, cases of impeachment were frequent; but none occurred in the reigns of Edward IV., Henry VII. and VIII., Edward VI., Queens Mary and Elizabeth, Hallam, Const. Hist. i. 357. In the reign of James I., the practice of impeachment was revived. Between 1620, when Sir Giles Mompesson and Lord Bacon were impeached, and the Revolution of 1688, about forty cases of impeachment occurred; in the reigns of William III., Queen Anne, and George I., fifteen; and in the reign of George II., that of Lord Lovat, 1746. The last cases were

Warren Hastings, 1788, and Lord Melville, 1805.

<sup>2</sup> 2 Rot. Parl. 53. 54; 3 Edward III. Nos. 2 and 6, 14 L. J. 260; 4 Bl. Com. c. 19; Campbell, Lives, iii. 356. 410; 13 L. J. 755.

<sup>3</sup> Judicature of Parliament, 3 Selden, Works, part ii. 1589; see also Hale, Jurisd. Lords, c. 16; 4 Hatsell, 60, n., 84. 163. 187. 216, n.; Hallam, Const. Hist. ii. 444; Sir R. Belknap and others, and Simon de Beverley and others, 1383, 3 Rot. Parl. 238. 240; 13 L. J. 755; 8 State Tr. 231–239; Burnet, ii. 280; 4 Parl. Hist. 1333; 8 State Tr. 326; Chief Justice Seruggs, 13 L. J. 752.



Blair and four other commoners were impeached of high treason, the Lords, after receiving and considering a report of precedents, including that of Simon de Beresford, and negating a motion for requiring the opinion of the judges, resolved that the impeachment should proceed.<sup>1</sup> And thus the right of the Commons to impeach a commoner of high treason has been affirmed by the last adjudication of the House of Lords.

It rests, therefore, with the House of Commons to determine when an impeachment should be instituted. A member, in his place, first charges the accused of high treason, or of certain high crimes and misdemeanours, and, after supporting his charge with proofs, moves that he be impeached. If the house deem the ground of accusation sufficient and agree to the motion, the member is ordered to go to the Lords, "and at their bar, in the name of the House of Commons, and of all the commons of the United Kingdom, to impeach the accused; and to acquaint them that this house will, in due time, exhibit particular articles against him, and make good the same." The member, accompanied by several others, proceeds to the bar of the House of Lords, and impeaches the accused accordingly.

A committee is appointed to draw up the articles, and on their report, the articles are discussed, and, when agreed to, are ingrossed and delivered to the Lords, with a proviso that the Commons shall be at liberty to exhibit further articles from time to time.<sup>2</sup> The accused sends answers to each article, which, together with all writings delivered in by him, are communicated to the Commons by the Lords; and to these, replications are returned, if necessary.<sup>3</sup>

If the accused be a peer, he is attached or retained in custody by order of the House of Lords; if a commoner, he is taken into custody by the Serjeant-at-arms attending the Commons, by whom he is delivered to the gentleman usher of the Black Rod, in whose custody he remains, unless he be admitted to bail by the House of Lords, or be otherwise disposed of by their order.<sup>4</sup>

The Lords appoint a day for the trial, and in the mean time the Commons appoint managers to prepare evidence and conduct the proceedings, and desire the Lords to summon all witnesses, who are required to prove their charges.<sup>5</sup> The accused may have summonses

Commence-  
ment of  
proceed-  
ings.

Articles of  
impeach-  
ment.

Accused  
taken into  
custody.

Man-  
agers ap-  
pointed.  
Witnesses  
sum-  
moned.

<sup>1</sup> 4 Hatsell, 428; 14 L. J. 260.

<sup>2</sup> 45 L. J. 350; 60 C. J. 482. 483. In the case of Warren Hastings, articles of impeachment were prepared before the formal impeachment; but the usual course

has been to prepare them afterwards.

<sup>3</sup> 20 L. J. 297; 18 C. J. 391; 61 ib. 164.

<sup>4</sup> 20 L. J. 112; 27 ib. 19; 16 C. J. 242; 42 ib. 793. 796; 37 L. J. 714.

<sup>5</sup> 61 C. J. 169. 224.

issued for the attendance of witnesses on his behalf, and is entitled to make his full defence by counsel.<sup>1</sup>

**The trial.** The trial has usually been held in Westminster Hall, which has been fitted up for that purpose. In the case of peers impeached of high treason, the House of Lords is presided over by the lord high steward, who is appointed by the Crown, on the address of their lordships ; but, at other times, by the lord chancellor or Lord Speaker of the House of Lords. The Commons attend the trial, as a committee of the whole house,<sup>2</sup> when the managers make their charges and adduce evidence in support of them : but they are bound to confine themselves to charges contained in the articles of impeachment. Mr. Warren Hastings complained, by petition to the House of Commons, that matters of accusation had been added to those originally laid to his charge, and the house resolved that certain words ought not to have been spoken by Mr. Burke.<sup>3</sup> When the case has been completed by the managers, they are answered by the counsel for the accused, by whom witnesses are also examined, if necessary ; and, in conclusion, the managers, as in other trials, have been allowed a right of reply.

**Lords determine if the accused be guilty.**

When the case is thus concluded, the Lords proceed to determine whether the accused be guilty of the crimes with which he has been charged. The lord high steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. Each peer in succession rises in his place when the question is put, and standing uncovered, and laying his right hand upon his breast, answers " guilty," or " not guilty," as the case may be, " upon my honour." Each article is proceeded with separately, in the same manner, the lord high steward giving his own opinion the last.<sup>4</sup> The numbers are then cast up, and, declared by the lord high steward to the lords, and the accused is acquainted with the result.<sup>5</sup>

**Commons demand judgment.**

If the accused be declared not guilty, the impeachment is dismissed ; if guilty, it is for the Commons, in the first place, to demand judgment of the Lords against him ; and they would protest against any judgment being pronounced until they had demanded it.<sup>6</sup>

**The judgment.**

<sup>1</sup> 20 Geo. II. c. 30 ; 45 L. J. 439.

<sup>2</sup> 45 L. J. 519.

<sup>3</sup> 44 C. J. 298. 320.

<sup>4</sup> Printed trial of Lord Melville, p. 402.

<sup>5</sup> *Ib.* p. 413.

<sup>6</sup> Commons' resolutions, Earl of Winton's and Lord Lovat's impeachments, 18 C. J. 405 ; 25 *ib.* 320.

acquaint the Commons that their lordships are ready to proceed further upon the impeachment; the managers attend; and the accused, being called to the bar, is then permitted to offer matters in arrest of judgment. Judgment is afterwards demanded by the Speaker, in the name of the Commons, and pronounced by the lord high steward, the lord chancellor, or Speaker of the House of Lords.<sup>1</sup>

The necessity of demanding judgment gives to the Commons the power of pardoning the accused, after he has been found guilty by the Lords; and in this manner an attempt was made, in 1725, to save the Earl of Macclesfield from the consequences of an impeachment, after he had been found guilty by the unanimous judgment of the House of Lords.<sup>2</sup>

So important is the impeachment by the Commons, that not only does it continue from session to session, in spite of prorogations, by which other parliamentary proceedings are determined, but it survives even a dissolution, by which the very existence of a Parliament is concluded.<sup>3</sup>

Proceedings not concluded by prorogation or dissolution.

In the case of the Earl of Danby, in 1679, the Commons protested against a royal pardon being pleaded in bar of an impeachment; and it was declared by the Act of Settlement, "That no pardon under the great seal of England shall be pleadable to an impeachment by the Commons in Parliament."

Pardon not pleadable.

Although the royal prerogative of pardon is not suffered to interfere with the exercise of parliamentary judicature, yet the prerogative itself is unimpaired in regard to all convictions whatever; and, after the judgment of the Lords has been pronounced, the Crown may relieve or pardon the offender. This right was exercised in the case of three of the Scottish lords who had been concerned in the rebellion of 1715, and who were relieved by the Crown, and at length received the royal pardon.

But may be given afterwards.

Concerning the trial of peers, very few words will be necessary. At common law, the only crimes for which a peer is to be tried by his peers, are treason, felony, misprision of treason, and misprision of felony; and the statutes which give such trial have reference to the same offences, either at common law or created by statute. For

Crimes for which peers are tried by their peers.

<sup>1</sup> 22 L. J. 556, 560; 27 ib. 78.

<sup>2</sup> 27 L. J. 554, 555; 20 C. J. 541 (27th May 1735); 16 State Tr. 767.

<sup>3</sup> 39 L. J. 191; Report, ib. 125; 46 C. J. 136; May, Const. Hist. i. 371; see,

however, the Acts passed in the case of Warren Hastings and Lord Melville, 26 Geo. III. c. 96; 45 ib. c. 125.

<sup>4</sup> See 4 Hatsell, 197, n. 208, 400, 405; 3 Macaulay, Hist. 407.

misdemeanours, and in cases of *præmunire*, it has been held that peers are to be tried in the same way as commoners, by a jury.<sup>1</sup>

Trial in  
Parlia-  
ment, or  
by court  
of lord  
high  
steward.

During the sitting of Parliament, they are tried by the House of Peers ; or, more properly, before the court of our lord the King in Parliament,<sup>2</sup> presided over by the lord high steward appointed by commission under the great seal : <sup>3</sup> but at other times, they may be tried before the court of the lord high steward,<sup>4</sup> to which, under the Treason Act, 1695 (7 Will. III. c. 3), all the peers must be summoned.

Indict-  
ments  
against  
peers.

By the Felony Act, 1841 (4 & 5 Vict. c. 22), it is enacted, that every lord of Parliament, or peer of this realm, having place and voice in Parliament, against whom any indictment may be found, shall plead to such indictment, and shall, upon conviction, be liable to the same punishment as any other of his Majesty's subjects.

Indictments are found, in the usual manner, against peers charged with treason or felony : but are certified into the House of Lords by writs of *certiorari*, when the proceedings are immediately taken up by that house. It is usual, in such cases, to appoint a committee to inspect the journals upon former trials of peers, and to consider the proper methods of proceeding ; and if the accused peer be not already in custody, an order is forthwith made for the gentleman usher of the Black Rod to attach him, and bring him to the bar of the house.<sup>5</sup>

Accused  
peers at  
the bar.

Peers on trial before the Lords for misdemeanours are allowed a seat within the bar : but if tried for treason or felony, they are placed outside the bar.<sup>6</sup>

Limita-  
tion of  
trial of  
peers in  
full Par-  
liament.

By standing order No. 65, it was resolved by the Lords, " That it is the ancient right of the peers of England to be tried only in full Parliament for any capital offences : but this order shall not be understood or construed to extend to any appeal of murder or other felony, to be brought against any peer or peers."

Vote of  
lord high  
steward.

When a peer is tried in full Parliament, the lord high steward votes with the other peers ; but when the trial is before the court of the lord high steward, he is only the judge to give direction in point of law ; and the verdict is given by the lords-triers.<sup>7</sup>

Spiritual  
lords.

<sup>1</sup> Rex v. Lord Vaux, 1 Bulst. 197.

<sup>2</sup> Fost. 141.

<sup>3</sup> After the trial, his grace breaks the white staff, and declares the commission dissolved, 133 L. J. 290.

<sup>4</sup> Sec 4 Bl. Com. 260 ; trial of Lord

Delamere, 11 State Tr. 509 ; 2 Macaulay, Hist. 38.

<sup>5</sup> 99 H. D. 3 s. 1050 (23rd June, 1848) ; 80 L. J. 415 ; 133 ib. 232. 246.

<sup>6</sup> Campbell, Lives, iv. 538, n.

<sup>7</sup> Ib. iii. 557, n.

and ill defined. Not being themselves ennobled in blood, they are "not of trial by nobility," but would be tried for a capital offence by a jury, like other commoners.<sup>1</sup> Though not entitled to a trial by the peers, they claim, and to a certain extent exercise, the right of sitting, as judges, upon the trial of peers in full Parliament. When a peer is to be tried in full Parliament, the bishops, as lords of Parliament, are entitled to take part in the proceedings of the House of Lords, of which they are members, and they are always summoned to attend with the other peers.<sup>2</sup> They are restrained from the full exercise of judicial functions by their ecclesiastical obligations. By the canons of the Church,<sup>3</sup> they are prohibited from voting in cases of blood; and by the Constitutions of Clarendon, it was declared, "That bishops, like other peers (or barons), ought to take part in trials in the king's court, or council, with the peers, until it comes to a question of the loss of life or limb."

It was declared by the Lords, on the impeachment of the Earl of Danby, "That the lords spiritual have a right to stay and sit in court in capital cases, till the court proceed to the vote of guilty or not guilty." And in accordance with this rule, the bishops are present during the trial of peers in Parliament, but ask leave to be absent from the judgment; which being agreed to, they withdraw, in compliance with the canons of the Church, but enter a protestation, "saving to themselves and their successors, all such rights in judicature as they have by law, and by right ought to have."<sup>4</sup>

In passing bills of attainder, the bishops are not subjected to the same restraints as upon an impeachment. The proceedings, though judicial, are legislative in form; and as they consist of numerous stages, no particular vote involves a conclusive judgment upon the accused. In the attainder of Sir John Fenwick, in 1696, the bishops voted in all the proceedings, and even upon the final question for the passing of the bill.<sup>5</sup>

By the 23rd article of the Act of Union with Scotland, it is declared that the sixteen representative peers shall have the right of sitting

Spiritual lords with draw.

Bishops vote in bills of attainder.

Representative peers of Scotland.

<sup>1</sup> Lords' S. O. No. 66; 1 Co. Inst. 31; 3 Co. Inst. 30; Gibson, Codex, 133; Gilb. C. P. 80; 1 Burn, Eccl. Law, 221, *et seq.*; Trials of Bishop Fisher and Archbishop Cranmer, 1 State Tr. 395. 767.

<sup>2</sup> 73 L. J. 16; Fost. 247. Spiritual lords are not summoned to attend the court of the lord high steward.

<sup>3</sup> Gibson, Codex, 124. 125; and see Burnet, ii. 216; and 3 Stillingfleet, Works, 820.

<sup>4</sup> 11 Henry II. (1164); 1 Wilkins' Concilia, 435; 13 L. J. 571; 27 ib. 76; 73 ib. 43; 133 ib. 290.

<sup>5</sup> 16 L. J. 44. 48; 13 State Tr. 750, *et seq.*

upon the trials of peers ; “ and in case of the trial of any peer in time of adjournment or prorogation of Parliament, they shall be summoned in the same manner, and have the same powers and privileges at such trial, as any other peers of Great Britain ; ” and in case there shall be any trials of peers when there is no Parliament in being, the sixteen peers who sat in the last Parliament shall be summoned in the same manner. All peers of Scotland enjoy the privilege of being tried as peers of Great Britain.

Representative  
peers of  
Ireland.

By the 4th article of the Act of Union with Ireland, it was enacted that “ the (representative) lords spiritual and temporal respectively, on the part of Ireland, shall have the same rights in respect of their sitting and voting upon the trial of peers, as the lords spiritual and temporal respectively on the part of Great Britain ; ” and that all the peers of Ireland shall be sued and tried as peers, but shall not have the right of sitting on the trial of peers.

Bills of  
attainder  
and of  
pains and  
penalties.

The proceedings of Parliament, in passing bills of attainder and of pains and penalties, do not vary from those adopted in regard to other bills ; <sup>1</sup> though the parties who are subjected to these proceedings are admitted to defend themselves by counsel and witnesses before both houses.

The highest  
form  
of parlia-  
mentary  
judica-  
ture.

Whenever a fitting occasion arises for its exercise, a bill of attainder is, undoubtedly, the highest form of parliamentary judicature. In impeachments, the Commons are but accusers and advocates ; while the Lords alone are judges of the crime. On the other hand, in passing bills of attainder, the Commons commit themselves by no accusation, nor are their powers directed against the offender : but they are judges of equal jurisdiction, and with the same responsibility, as the Lords ; and the accused can only be condemned by the united judgment of the Crown, the Lords, and the Commons.

<sup>1</sup> Bills of attainder generally commence in the House of Lords. In 1722, the bill of pains and penalties against the

Bishop of Rochester, was brought into the Commons, 20 C. J. 165.

## BOOK III.

## THE MANNER OF PASSING PRIVATE BILLS.

## CHAPTER XXVI.

## PRELIMINARY VIEW OF PRIVATE BILLS.

BILLS for the particular interest or benefit of any person or persons, are treated, in Parliament, as private bills. Whether they be for the interest of an individual, of a public company or corporation, or of a parish, city, county, or other locality, they are equally distinguished from measures of public policy; and this distinction is marked, in the very manner of their introduction. Every private bill is solicited by the parties themselves who are interested in promoting it, being founded upon a petition which must be duly deposited in accordance with standing order <sup>1</sup> (see p. 614).

But while the distinction between public and private bills may be thus generally defined, considerable difficulties often arise in determining to which description particular bills properly belong. Thus, upon a public bill, the question not infrequently arises whether it ought not more properly to have been introduced as a private bill.<sup>2</sup> And private bills have often been objected to, and have been debarred from proceeding, on the ground that, from their scope or objects, or from the principles involved in them, they should have been introduced as public bills. The following examples serve to show what course has been adopted in various cases of this kind, whether on a public or on a private bill. It has already been explained that there

<sup>1</sup> For cases of urgent necessity, where an exception has been made and a private bill has been brought in otherwise than upon petition, see p. 639.

<sup>2</sup> 80 C. J. 490 and 491. And cf. the proceedings upon the Waterford Infirmary Bills 1895 and 1896 (150 C. J. 107. 110; 151 ib. 32. 55. 116; 37 Parl.

Deb. 4 s. 1050) and *infra* p. 598, note 5 (Metropolitan, and London City, Police Bills 1863 and 1874); p. 599 (Brokers (City of London) Bill 1870); p. 601 (Manchester Police Bill, 1839); and p. 602, note 1 (Ancient Monuments Bill, 1873); p. 603, notes 5 and 6, etc.

Dis-  
tinctive  
character  
of private  
bills.

Difficulty  
of deter-  
mining  
whether  
certain  
bills  
should be  
public or  
private.

are certain bills—clearly belonging, in part, to both descriptions—that are regularly recognized as “hybrid” bills: they are those bills which, though brought in as public bills, are referred before their second reading to the Examiners and are proved to affect private rights and to be within the application of the Standing Orders relative to Private Bills. The special procedure which is adopted in their case, and which is itself of a hybrid character, has already been fully described (see p. 354).

Bills brought in by government for local purposes, &c.

Bills concerning the metropolis generally.

Bills which are brought in by the government (dealing with Crown property, or with national and other works in different localities, &c.), and which affect private interests, are introduced as public bills, and subsequently treated as hybrid bills.<sup>1</sup>

A bill relating to a city is usually held to be a private bill. But, owing to the large area, the number of parishes, the vast population, and the variety of interests concerned, bills which affect the entire metropolis have, as a rule, been regarded as measures of public policy rather than of local interest; and although a bill affecting the metropolis generally is not necessarily introduced as a public bill,<sup>2</sup> such bills have usually been so introduced and have either

<sup>1</sup> Public Offices Site Bill, 1882; Forest of Dean Highways, New Forest Highways, Isle of Wight Highways Bills, 1883; Hyde Park Corner (New Streets) Bills, 1883, 1884, 1886; Waltham Abbey Gunpowder Bill, 1889; Aldershot Roads Bill, 1890; Dublin Barracks Improvement Bill, 1892; Public Offices (Whitchall) Site Bill, and Patent Office Extension Bill, 1897; London Water Bill, 1902; Osborne Estate Bill, 1902; Patent Office (Extension) Bill and Port of London Bill, 1903; Dean Forest Bills, 1904 and 1906; Crown Lands Bill, 1906; Public Offices Sites (Extension) Bill, and Port of London Bill, 1908; London Electric Supply Bills, 1909 and 1910; Duke of York's School (Chapel) Bill, 1910; Telegraph (Construction) Bill, Salford Hundred Court of Record Bill, National Gallery and St. James's Park Bill, 1911; Public Offices (Sites) Bill, North Killingholme (Admiralty Pier) Bill, London Institution (Transfer) Bill, Royal Scottish Museum (Extension) Bill, 1912-13; Post Office (London) Railway Bill and Wine Privileges Abolition Bill, 1913; Mall Approach Improvement Bill, Naval Medical Compassionate Fund Bill, and

Wine Privileges (Discontinuance) Bill, 1914; Ulster Canal Bill, 1914-16. And cf. p. 779, n. 6.

<sup>2</sup> Mr. Speaker Peel, 14th Feb. 1895, 30 Parl. Deb. 4 s. 708-9. The Thames Conservancy Bills of 1857, 1894 and 1905, were introduced and passed as private bills. In 1877, the Thames River Prevention of Floods Bill (to amend the Metropolis Management Act, 1855) was introduced as a public bill, and (although not passed) was dealt with as a hybrid bill; but in 1879 a similar bill for the same purpose was brought in as a private bill (134 C. J. 39. 68) and passed. In 1881, the Thames Navigation Bill and, in 1882, the Metropolis Management and Floods Prevention Bill were introduced as private bills; but the latter was afterwards consolidated with a public bill, and the former, on exception being taken to it as a private bill, was withdrawn, and a public bill introduced. As to the London Streets and Buildings Bill, 1894, which was introduced and passed as a private bill, cf. *infra*, p. 597 (bills promoted by the London County Council) and p. 605, note 3.



proceeded throughout as public bills<sup>1</sup> or been dealt with as hybrid bills.<sup>2</sup>

Since 1874, bills for giving further powers to the Metropolitan Board of Works and to its successor, the London County Council, have been introduced and passed as private bills.<sup>3</sup> With regard to bills promoted by the London County Council which contain power to raise money by the creation of stock or on loan, standing order No. 194<sup>4</sup> (which was first passed in 1876<sup>5</sup> and has since been largely amended<sup>6</sup>) requires that—although treated in their committee stage in like manner as private bills—they “shall be introduced as public bills;” but from this requirement such extensive exemptions are also provided for by the order in its present form, that the number of bills which, under its operation, are required to be introduced as public bills is now materially narrowed. The procedure, however, with regard to all bills, promoted by the London County Council, involving the borrowing or expenditure of money is regulated by this standing order, No. 194, and by the five further standing orders, Nos. 194A to 194E, which were passed in 1891.<sup>7</sup> And, stated generally, it may be said that all the ordinary bills of the London County Council are introduced as private bills, but that in cases where it might be necessary to apply for powers inconsistent with the exempting

Bills promoted by London County Council. S. O. 194 to 194 E. (H. C.)

<sup>1</sup> Metropolis Police Bills, 1828 and 1839; Metropolitan Police Courts Bills, 1839, 1840; Metropolitan Sewers Bills, 1848 and 1854; Main Drainage of the Metropolis Bill, 1858; Annoyance Jurors (Westminster) Bill, 1861; Metropolis Local Management Bill, 1855; Metropolis Management and Buildings Act Amendment Bills, 1875 to 1890; Racecourses (Metropolis) Bill, 1879; Public Health (London) Bill, 1891; Public Health (London) Act 1891 Amendment Bill, 1893; London Government Bill, 1899.

<sup>2</sup> Metropolis Water Supply Bills 1851, 1852 and 1878; Thames Embankment Bills, 1862, 1863; Metropolis Gas Bills, 1867, 1876; Metropolis Water Supply and Fire Prevention Bill, 1874; Metropolitan Toll Bridges Bill, 1877; Thames Steam Navigation Bill, 1880; Metropolitan Waterworks Purchase Bill, 1880; Hyde Park Corner (New Streets) Bill, 1883; Metropolis Water Supply Bill, 1891; Watermen's and Lightermen's Company Bill, 1892. And cf. 106 C. J.

191; 133 ib. 13; 148 ib. 487. 492; 150 ib. 21. 44.

<sup>3</sup> 129 C. J. 26; 130 ib. 19, &c.; London Subway, &c., Bill, 1890; London County Council (General Powers) Bills, 1890, etc.; London Sky Signs Bill, and London Overhead Wire Bill, 1891; etc.

<sup>4</sup> The numbers quoted are those of the (House of Commons) standing orders, relative to Private Business, of 1915. In the House of Lords, standing order No. 69 corresponds to standing order No. 194 (H. C.).

<sup>5</sup> 131 C. J. 405. 408; and Report of Select Committee on Standing Orders Revision, Parl. Papers (H. C.) sess. 1876, No. 404, p. 53.

<sup>6</sup> 146 C. J. 369. 370; 148 C. J. 522.

<sup>7</sup> For the special provision which is made respecting the dates for notices and deposits in connection with certain of the private bills promoted by the London County Council, *vide* S. O. 194B (H. C.) and 69B (H. L.) and p. 614 (petition for bill), pp. 639, 640 (presentation of bill).

conditions of standing order No. 194, or with the limitations of standing orders Nos. 194 to 194E, the procedure should be by public bill.<sup>1</sup> On the 9th February, 1893, the Speaker ruled that the London Owners Improvement Rate or Charge Bill should be introduced as a public bill, on the ground that the interests involved were too vast and the terms of the standing order too specific to admit of its introduction as a private bill; but on the 14th April following he ruled that the London Improvements Bill might be introduced as a private bill, inasmuch as, in view of the exceptions in standing order No. 194, the bill as a whole need not be introduced as a public bill, and the clause in it for raising further money under a new principle, *i.e.* "betterment," to which objection was taken, might be dealt with on a later stage of the bill.<sup>2</sup>

Bills concerning the City of London.

Bills concerning only the City of London have generally been private bills solicited by the corporation itself, which desired special legislation affecting its own property, interests, and jurisdiction.<sup>3</sup> Thus even the bill for establishing a police force within the city was brought in upon petition, and passed as a private bill;<sup>4</sup> and in 1863, when it was sought to repeal this Act by a public bill (for the amalgamation of the city and metropolitan police) without the notices required in the case of a private bill, the bill was not permitted to proceed.<sup>5</sup> Private bills also have been solicited for the reform of the corporation itself;<sup>6</sup> while measures for the same object have been proposed by the Government in public bills.<sup>7</sup> Again, the corporation and other parties sought, by means of private bills, to improve

<sup>1</sup> In 1899, the London Water (Finance) Bill, which should have been thus introduced, was introduced as a private bill, and Mr. Speaker ruled (27 April) that the breach of Standing Order 194, so committed, could not be cured by moving that the Standing Order be suspended and the bill be read a second time.

<sup>2</sup> 8 Parl. Deb. 4 s. 856; 11 ib. 310.

<sup>3</sup> City Small Debts Bills, 1847 and 1848; City Elections Bill, 1849; Coal Duties Bill, 1851; London Bridge Approaches Bill, and City of London School Bill, 1879; London (City) Lands Bill, 1881; City of London Fire Inquests Bill, 1888; City of London Sewers Bill, 1897; City of London (Various Powers) Bills, 1900, 1911, 1912-13; London Bridge Widening Bill, 1901; City of London (Streets) (Public Health) Bill,

1902; City of London (Union of Parishes) Bill, 1907; City of London (Street Traffic) Bill, 1909; City of London (Tithes and Rates) Bill, 1910; Corporation of London (Bridges) Bill, 1911; City of London (Celluloid Regulations) Bill, 1913.

<sup>4</sup> London City Police Bill, 1839, 94 C. J. 175.

<sup>5</sup> 118 C. J. 173, 176, 195, 211. Cf. also the London City Police Bill, 1874 (a private bill), 129 C. J. 33.

<sup>6</sup> 104 C. J. 15; 107 ib. 57; 119 H. D. 3 s. 1035.

<sup>7</sup> London Corporation Bills, 1850, 1859, 1860, 111 C. J. 114, 141 H. D. 3 s. 314; 114 C. J. 253, 154 H. D. 3 s. 946; 115 C. J. 28, 156 H. D. 3 s. 282. These bills were not proceeded with.

Smithfield Market, or to provide a suitable market for cattle ;<sup>1</sup> but the Metropolitan Cattle Market was established by an Act which was brought in by the Government as a public bill and subsequently treated as a " hybrid " bill.<sup>2</sup> This Act, however, was amended in 1875, by a private Act ;<sup>3</sup> and the Metropolitan Cattle Market Bill in the same year was also treated as a private bill.<sup>4</sup> Other bills, again, concerning the City of London, but at the same time affecting public interests, and involving considerations of public policy, have been introduced and passed as public bills.<sup>5</sup> In 1870, on the second reading of the Brokers (City of London) Bill, objection was taken that it ought to have been brought in as a private bill : but the deputy Speaker pointed out that the bill had been referred to the Examiners,<sup>6</sup> who had reported that none of the standing orders relative to private bills were applicable to it ;<sup>7</sup> and in 1883, another bill, founded upon this precedent, was introduced as a public bill.<sup>8</sup> In 1871, the Court of Hustings (City of London) Bill, which established a court having jurisdiction over the metropolis, was brought in as a private bill : but, notice being taken of the extent and public importance of the measure, it was withdrawn.<sup>9</sup> In 1881, and again in 1882 and 1883, the Parochial Charities (London) Bill was brought in as a public bill and treated as a " hybrid " bill ; whilst in 1882 another bill with the same object, promoted by trustees and others interested, was brought in as a private bill.<sup>10</sup>

Bills concerning Edinburgh or Dublin have also been public or

Bills concerning  
Edinburgh or  
Dublin.

<sup>1</sup> 103 C. J. 176 ; 106 ib. 22. 26.

<sup>2</sup> 106 C. J. 66, &c.

<sup>3</sup> Metropolitan Cattle Markets (Smithfield) Act, 1875.

<sup>4</sup> Both these bills were promoted by the Corporation (130 C. J. 11). The London Riverside Fish Market Bill, 1882, and the following Bills (promoted by the Corporation) were also private bills : Metropolitan Markets Fish, etc., Bill, 1882, and bills (introduced in 1901 and 1902) for the acquisition of the London Riverside Fish Market and of Spitalfields Market.

<sup>5</sup> Coalwhippers (Port of London), 1843, 1846, and 1851 ; Vend and Delivery of Coals in London and Westminster, 1845. (There was also a private bill in the same year.) Ballast-heavers (Port of London), 1852 ; Coal and Wine Duties Continuance, 1861, 1863, 1868 ; and Coal and Wine Duties Abolition, 1889, 336 H. D.

3 s. 701.

<sup>6</sup> Cf. as to the Examiners, p. 354, and Chap. XXVII.

<sup>7</sup> 125 C. J. 83. 104, 202 H. D. 3 s. 740.

<sup>8</sup> London Brokers' Relief Act, 1870, Repeal Bill, 138 C. J. 12. 105.

<sup>9</sup> 126 C. J. 103, 204 H. D. 3 s. 1500. In 1864 the Weighing of Grain (Port of London) Bill was held to be properly a public bill as affecting an extensive area and a vast population, and its object being to substitute weighing for measurement of grain in conformity with a public Act of the same session (176 H. D. 3 s. 171). But in 1872 and in 1877 measures regulating the metage of grain in the Port of London were passed as private Bills. In 1879 the London (City) Tithes Bill was a private bill.

<sup>10</sup> London Parochial Charities Bill, 137 C. J. 28.

private, according to their objects, and the circumstances connected with their introduction.<sup>1</sup>

Bills  
treated as  
public  
measures,  
although  
actually  
applicable  
to few  
localities.

In 1856, the Local Dues on Shipping Bill was held to be properly a public bill. It proposed to abolish passing tolls, to transfer the harbours of Dover, Ramsgate, Whitby and Bridlington to the Board of Trade, to impose rates, and to repeal local acts. Being a measure of general policy, its character was not changed by the fact that only these four harbours came under its operation.<sup>2</sup> And, in 1861, the Harbours Bill was introduced and passed as a public bill.<sup>3</sup> It affected the same four harbours, and the local Acts under which they were administered, but otherwise dealt with so many matters of general legislation, as to be unquestionably a measure of public policy.

Bills  
relating to  
adminis-  
tration of  
justice,  
public  
jurisdic-  
tions, &c.

Bills relating to the administration of justice and various public jurisdictions have often been treated as public bills : <sup>4</sup> but frequently they have been solicited, by the promoters, as private bills.<sup>5</sup> On

<sup>1</sup> The Edinburgh Municipality Act, 1856, Edinburgh Improvement Act, 1876, and Edinburgh Extension Act, 1896, for example, were passed as private bills. The Edinburgh General Register House Acts of 1847 and 1896 (brought in by the Government), were respectively passed as public and hybrid bills. The abolition of the annuity tax in Edinburgh has been proposed in public (hybrid) bills introduced by the Government (108 C. J. 612. 613. 630 ; 112 C. J. 298. 302), and also in a private bill (107 C. J. 48. 147). The Edinburgh Municipal and Police Acts of 1879, 1882 and 1891, were passed as private bills, and the Dublin Police Acts (1824 and 1867) as public bills. Legislation for the port of Dublin, formerly effected by public bills (6 & 7 Will. IV. c. 117 ; 1 & 2 Vict. c. 36 ; 17 & 18 Vict. c. 22), has more recently been proposed in private bills (Dublin Port and Docks Act, 1898 ; Dublin Port and Docks Board Act, 1902) ; while legislation regarding the collection of rates in Dublin has been proposed both in a public bill (Collection of Rates (Dublin) Act, 1849) and in a private bill (Dublin Corporation Bill, 1850 ; 105 C. J. 329. 365). The Dublin City (Highways) Bill, 1882, was brought in as a public, and treated as a hybrid, bill (137 C. J. 75, &c.). The Dublin (South) City Market Act, 1876, the Dublin Corporation (Markets) Act, 1899, and the Dublin Corporation Acts, 1893, 1897 and

1900, were passed as private bills.

<sup>2</sup> 111 C. J. 17. 72. In 1899 a private bill was introduced dealing with the rates leviable by certain harbour, dock and other authorities in different parts of the country ; but the Chairman of Committees in the House of Lords considered that this object ought to be attained either by a public bill or by separate private bills applying severally to the various ports, &c., and the bill was not proceeded with (131 L. J. 59).

<sup>3</sup> 24 & 25 Vict. c. 47.

<sup>4</sup> The King's County Assizes Act, 1832 ; Dublin Sessions Act, 1843 ; Buckingham Summer Assizes Act, 1849 ; Nowgate (Gaol (Dublin) Act, 1846 ; Sheriff and Commissary Courts (Berwickshire) Act, 1853 ; Cinque Ports Acts, 1855 and 1857 ; Falmouth Quarter Sessions and Gaol Act, 1865 ; Sussex County Business and Quarter Sessions Act, 1865 ; Chester Courts Act, 1867 ; Glasgow Boundary Act, 1871 ; Bath Prison Act, 1871 ; and the Berwickshire County Town Act, 1903, were passed as public bills. The Belfast Municipal Boundaries Act, 1853 ; County of Hertford and Liberty of St. Alban's Act, 1874 ; and County of Suffolk Act, 1904, were brought in as public bills, but otherwise treated as hybrid bills.

<sup>5</sup> Staffordshire Potteries Stipendiary Justices Act, 1839, 1871 and 1895 ; Yorkshire Registries, &c., Bill, 1910.

10th March, 1868, exception was taken to the Salford Hundred and Manchester Courts of Record Bill, on the ground that it ought to have been introduced as a public bill: but it was shown by the chairman of ways and means that the rules and precedents of the house justified its introduction as a private bill.<sup>1</sup>

In 1839, three measures were passed, as public bills, for improving the police in Manchester, Birmingham, and Bolton,<sup>2</sup> the provisions being compulsory upon those towns, in the interest of public order, and the chief commissioners of police being appointed by the Crown.<sup>3</sup> In 1908 a private bill was introduced for the purpose of transferring the powers and duties of the standing joint committee of the West Riding of Yorkshire to the county council, but on the order being read for its second reading the Speaker called the attention of the House to its provisions which were of too important a character to be dealt with by a private bill, and the bill was accordingly withdrawn.<sup>4</sup> In 1854, the Manchester Education Bill was introduced as a private bill: but on the second reading an amendment was carried, declaring the subject to be one which ought not, at the present time, to be dealt with by any private bill.<sup>5</sup> In 1865, a private bill was brought in to alter the licensing system at Liverpool. It was objected that as this bill proposed to deal with the public revenues, it ought not to have been introduced as a private bill: but as the bill was strictly local, and as the clauses relating to licence duties were printed in italics and reserved for the consideration of a committee of the whole house, it was held that the bill was not open to any technical objection requiring its withdrawal.<sup>6</sup> On the second reading, however, an amendment was carried, to the effect that the granting of licences for the sale of intoxicating liquors was a subject which ought not, at present, to be dealt with by any private bill.<sup>7</sup> Bills relating to the sale of intoxicating liquors on Sunday, in particular counties, have been introduced and treated as public bills.<sup>8</sup>

In 1873, a public bill was introduced, for the protection and preservation of certain ancient monuments, in various parts of the country, the monuments in question being enumerated in the

Bills relating to police, education, licensing, &c., in a definite locality or area.

Bill affecting ancient monuments in various places.

<sup>1</sup> In session 1911 the Salford Hundred Court of Record Bill was introduced as a public bill and otherwise treated as a hybrid bill, 166 C. J. 292, 293.

<sup>2</sup> 2 & 3 Vict. cc. 87, 88, 95.

<sup>3</sup> 50 H. D. 3 s. 141.

<sup>4</sup> 163 C. J. 32, 183 Parl. Deb. 4 s. 1355.

<sup>5</sup> 109 C. J. 90.

<sup>6</sup> 177 H. D. 3 s. 653.

<sup>7</sup> 120 C. J. 92.

<sup>8</sup> Cornwall, 1882 and 1883; Durham, Yorkshire, Isle of Wight, Northumberland, 1883.

schedule to the bill.<sup>1</sup> Objections were raised that, as the bill affected the property of persons upon whose lands those monuments were situated, it should have been brought in as a private bill: but its nature and objects were obviously of a public character, and it concerned too many counties and localities to be treated as a private bill; nor were any of its objects such as are contemplated by the standing orders, or referred to in them.<sup>2</sup>

Bills concerning the property or powers of religious communities, colleges, &c.

In 1871, a bill for regulating the management of certain trust properties of the Presbyterian Church of Ireland was introduced into the House of Lords as a private bill: but objection being taken to legislation upon such a subject by means of a private bill, the bill was withdrawn, and a public bill for effecting the same object was passed by both houses.<sup>3</sup> In 1905, a public bill—the Churches (Scotland) Bill—was introduced by the Government to provide for the allocation, between the Free Church and the United Free Church, of properties belonging to the former. It was a measure of general interest and of general application; but as it affected the property of individuals, it was referred to the Examiners. They held, however, that the Standing Orders relating to Private Bills were not applicable to it; and it proceeded, and was passed, as a public bill.<sup>4</sup> In 1888, the Keble College Bill was thrown out, on third reading, on the ground that it was inexpedient to extend by a private bill, to a college exceptionally constituted, the exemption from the Mortmain Acts which was enjoyed by other colleges at Oxford and Cambridge.<sup>5</sup> In the same session the public Act consolidating the law relating to Mortmain and to the disposition of land for Charitable Uses was passed:<sup>6</sup> by amendments made during its passage, both Keble College and the Victoria University were included among the bodies

<sup>1</sup> Ancient Monuments Bill, 128 C. J. 11. 13. 191, &c.

<sup>2</sup> 218 H. D. 3 s. 574; 223 ib. 879.

<sup>3</sup> 34 & 35 Vict. c. 24; 204 H. D. 3 s. 1908. In the same session, the like proceedings occurred in the case of a bill to regulate the proceedings and powers of the Primitive Wesleyan Methodist Society of Ireland (34 & 35 Vict. c. 40). In 1876 the Methodist Conference Bill and in 1907 the United Methodist Church Bill were introduced and passed as private bills, the latter being referred to a specially constituted committee, 131 C. J. 28; 162 ib. 8. In 1848, the committee on the Farmers' Estate

Society (Ireland) Bill reported that, as the bill appeared to them to involve important considerations of public policy, it should be recommitted to a committee of the whole house, which was accordingly done (103 C. J. 782). Cf. also East India Railway Bill, 134 C. J. 308, 310, 247 H. D. 3 s. 1081, Parl. Pap. (H. C.) sess. 1879, No. 226 (Special Report).

<sup>4</sup> 5 Edw. VII. c. 12, 160 C. J. 248. 259.

<sup>5</sup> 143 C. J. 165. 166, 324 H. D. 3 s. 1687 *et seq.*

<sup>6</sup> Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42); 322 H. D. 3 s. 1597; 324 ib. 147.

for whom a special exemption was provided;<sup>1</sup> and other bodies have since been added, by private bills, to the number of those to whom this exemption extends.<sup>2</sup>

The distinction between two bills, of apparently the same character, is sometimes sufficient to constitute one a public, and the other a private, bill. Thus, in 1855, the Carlisle Canonries Bill, which suspended the appointment to the next vacant canonry, and directed the ecclesiastical commissioners to pay the income to the augmentation of certain livings at Carlisle, was treated as a public bill, as it related to the ecclesiastical commissioners—a public body holding certain church funds in trust for public purposes prescribed by law—and merely diverted the application of some of these funds from one purpose to another.<sup>3</sup> On the other hand, the South Shields Parochial Districts Bill was held to be a private bill, as it sought to appropriate to local purposes (viz. the increase of certain small livings at South Shields) a sum of 15,000*l.* to which the dean and chapter of Durham had become entitled by the sale of lands for the execution of certain public works.<sup>4</sup> In 1872, a bill to vest the Rock of Cashel, and the buildings and ruins thereon, in trustees, was brought in as a public bill, but, on its being referred to the examiners, it was held that the standing orders relative to private bills which were applicable to the bill had not been complied with and the standing orders committee resolved that such compliance should not be dispensed with.<sup>5</sup> In the following year, another bill, for the same objects, but empowering the church temporalities commissioners and the secretary to the commissioners of public works in Ireland, with the consent of the lord-lieutenant, to transfer and assign the rock and buildings to trustees, was similarly introduced and was held to be a public bill, as it merely sought powers for public bodies who already had a statutory interest in the property.<sup>6</sup> In 1902 the management of the

Bills apparently similar, respectively regarded as public and private.

<sup>1</sup> 51 & 52 Vict. c. 42. s. 7; 330 H. D. 3 s. 380. 382. 437.

<sup>2</sup> Liverpool University Act, 1903 (3 Edw. VII. (Local and Personal) c. cccxxii. s. 12); University of Leeds Act, 1904 (4 Edw. VII. c. xxxv. s. 10); University of Sheffield Act, 1905 (5 Edw. VII. c. clii. s. 9); University of Bristol Act, 1909 (9 Edw. VII. c. xlii. s. 10). As to exemptions from the Mortmain Acts provided for previous to the consolidating Act of 1888 (51 & 52 Vict. c. 42. s. 13 and sched.), see the Act 9 Geo. II. c. 36. s. 4;

the Act 4 & 5 Vict. c. 39. s. 13; the University College London (private) Act, 1869 (32 & 33 Vict. c. xxiii. s. 4); and 324 H. D. 3 s. 1689.

<sup>3</sup> See also Newcastle Chapter Bill, 1884.

<sup>4</sup> See also Burnley Rectory Bill, 1890; Hanover Chapel Bill, and Handsworth (Staffordshire) Rectory Bill, 1891.

<sup>5</sup> 127 C. J. 156. 157. 189. 198.

<sup>6</sup> 128 C. J. 114. 115. 140. In 1905 a public bill for the establishment of a central Canal Trust was introduced,

Imperial Institute was transferred from the existing corporation to the Board of Trade by means of a private Act, but in 1916 when the management was transferred from the Board of Trade to another government department, namely, the Colonial Office, recourse was had to a public bill.<sup>1</sup>

Bill conferring large powers upon a government department.

In 1900, on the second reading of a private bill promoted by the Metropolitan Water Companies, the Speaker called the attention of the house to the large and important powers which were proposed to be conferred by it upon a public department (the Local Government Board), and which, according to the practice of the house, ought to be secured by a public rather than by a private bill; and the bill was accordingly withdrawn.<sup>2</sup>

Bill authorizing grant of diplomas.

In 1910, on the second reading of the Society of Apothecaries of London Bill which had been introduced as a private bill, the Speaker drew attention to the fact that the bill sought to empower the Society to grant diplomas in sanitary science and public health, and for dentistry and dental surgery, and ruled that it should proceed as a public bill as it dealt with public interests; and the bill was accordingly withdrawn.<sup>3</sup>

Bill containing a government guarantee. Bill concerning Turkish loans.

In 1861, the Red Sea and India Telegraph Bill, which amended a private Act, was introduced and proceeded with as a public bill, as it concerned the conditions of a government guarantee.<sup>4</sup>

In 1877, notices were given of a private bill for settling a scheme of arrangement for the Turkish loans of 1854, 1855 and 1871: but its subject was obviously not one to be dealt with by a private bill, and it was not proceeded with.

Public bills introduced *vice* private bills withdrawn.

When a private bill is thus withdrawn, a public bill for the same purpose has in many cases been introduced in its place, and passed;

containing a provision which did not apply to canals generally, but which compulsorily transferred to the trust the undertakings of certain canal companies, only, who were specified in a schedule. The notices, that would have been necessary in such a case with regard to a private bill, not having been given, the bill was ordered to be withdrawn (160 C. J. 201. 210. 214-216). Another bill was then similarly introduced which had the same general object; but it contained a different provision respecting the specified undertakings (requiring that the Canal Trust should take steps to acquire them by agreement or through a Provisional

Order), and to this bill the standing orders relating to private bills were held not to apply (160 C. J. 280. 327). In 1873 exception was taken to the Union of Benefices (a public) Bill on the ground that, as it deprived certain parishes of powers which they possessed under the Union of Benefices Act, 1860 (23 & 24 Vict. c. 142), it ought to have been brought in as a private bill or to be treated as a hybrid bill; but it was held to be strictly a public bill (114 H. D. 3 s. 282. 508).

<sup>1</sup> 2 Edw. VII. c. xxxix.; 6 & 7 Geo. V. c. 8.

<sup>2</sup> 155 C. J. 30. 124.

<sup>3</sup> 165 C. J. 31, 14 H. C. Deb. 5 s. 955.

<sup>4</sup> 116 C. J. 36, etc., Denison, 78.



but a bill, begun as a private bill, cannot be taken up and proceeded with as a public bill.<sup>1</sup>

It has been questioned whether public Acts may properly be repealed or amended by a private bill; and the inconvenience of their repeal or amendment by an Act which, being passed as a private bill and being of a local character, is not printed among the public general Acts, has sometimes been urged as a reason for refusing to sanction this course.<sup>2</sup> No rule, however, has been established which precludes the promoters of a private bill from seeking the repeal or amendment of public Acts. A private bill is itself an exception, of some degree, from the general law, or seeks for some powers which the general law does not afford;<sup>3</sup> and the fact that it provides for a repeal or an amendment of public Acts is far from always being a fatal objection to its being introduced as a private

Repeal of public Acts by private bills.

<sup>1</sup> In 1865, the promoters of the Middlesex Industrial School Bill, dissatisfied with some amendments made in committee, determined to abandon it; whereupon Mr. Pope Hennessy gave notice that he should proceed with it as a public bill: but it was held that such a proceeding would be irregular, and it was not persisted in, Denison, 182.

<sup>2</sup> In 1832 a public General Act (7 & 8 Geo. IV. c. 31) was amended, so far as the city of Bristol was concerned, by means of a private bill (2 & 3 Will. IV. (local and personal) c. lxxxviii.). This case was quoted by Mr. Speaker, on the 18th July, 1861, when an objection was taken to the Metropolitan District Railways Bill on the ground that it amended the Thames Embankment (a public or hybrid) Act, 176 H. D. 3 s. 1619. Cf. also the questions raised, in the Lords, on the Brokers' Bonds and Rent Bills, 1864, 176 ib. 408-411, the London (City) Tithes Act, 1864, which repealed a public Act of Henry VIII. 176 ib. 480, the Dover Harbour (Corporation) Bill, 1887, 311 ib. 656-668, and the Woolwich Borough Council Bill, 1905, 146 Parl. Deb. 4 s. 1075-1087; and, in the Commons, on the London Valuation and Assessment Bill, 1895, the Belfast Corporation Bill, 1896, and the National Telephone Company Bill, 1899 (see p. 606, n. 3).

<sup>3</sup> The provisions of some public general Acts are regularly amended, in some degree, with regard to particular localities,

by means of private bills. In the case of sanitary enactments, for example, new circumstances may necessitate modifications or relaxations, in individual instances, of the stringent provisions of the general law; and it is now quite regular practice for Parliament to modify or alter provisions of the Public Health Acts with regard to particular localities. Similarly, nearly every tramway (private) bill amends the provisions of the (public) Tramways Act of 1870, in consequence of the new requirements of electrical traction; and the provisions of the Electric Lighting Act, 1882, as to the accounts of local authorities, are frequently amended by private bills. Amendments by private bills of the Municipal Corporations Act, 1882, are less frequent; but in the Plymouth Corporation Act of 1904, the provisions of the public general Act were in effect repealed, so far as this corporation was concerned, and new and more stringent provisions were substituted with respect to the audit of the corporation accounts (4 Edw. VII. c. xcvi., s. 6; and cf. 158 C. J. 178). In 1894, a bill to consolidate and amend the enactments relating to Streets and Buildings in London, and a bill consolidating and amending the statutory powers of the Thames Conservancy, were both passed as private bills, although in each case various public Acts were repealed (57 & 58 Vict. c. cexiii. and clxxxvii.).

bill.<sup>1</sup> But the scope of the public Acts which a private bill proposes to repeal or to amend, and the nature and degree of the proposed repeal or amendment, have to be considered ;<sup>2</sup> and provisions of this kind in private bills demand peculiar vigilance, lest public laws be lightly set aside for the benefit of particular persons or places. On the 14th February, 1895, in the case of the London Valuation and Assessment Bill (introduced for the purpose of forming a common basis of imperial and local taxation), objection was taken to proceeding with the bill as a private bill, on the ground that it entirely changed the law of assessment and rating, and repealed numerous public Acts of Parliament. The Speaker stated that the Acts proposed in this instance to be repealed were of vast magnitude and covered a vast area : that the Bill affected not only local rating but imperial taxation, involved interests which were much more than local, and proposed to create a new Court of Record in the matter of assessment ; and that, in view of its scope, it ought to be introduced as a public, and not as a private, bill.<sup>3</sup>

The classification of bills as public or private

When a public Act is repealed or amended by one passed as a private bill, the fact is noted in the annual volume of the public general Acts ;<sup>4</sup> but these volumes do not include those Acts

<sup>1</sup> Mr. Speaker Peel, 30 Parl. Deb. 4 s. 708.

<sup>2</sup> *Ib.* ; and Mr. Speaker Gully, 38 Parl. Deb. 4 s. 335.

<sup>3</sup> 150 C. J. 32, 38, 30 Parl. Deb. 4 s. 706-710. This ruling was cited in support of similar objections taken on two subsequent occasions—but in each case unsuccessfully—to private bills. On 6th March, 1896, on the second reading of the Belfast Corporation Bill (to extend the city of Belfast and for other purposes), it was objected that, as the bill dealt with very large interests, embraced a very large area, and also repealed important sections in certain public Acts, it ought not to have been introduced as a private bill. But Mr. Speaker stated that, although the bill referred, as many private bills do, to some public matter, and sought to enact that public statutes should not apply or should be partially repealed, these provisions were not so numerous or so important as to necessitate its introduction as a public bill, 38 Parl. Deb. 4 s. 335. On 6th March, 1899, objection was

taken to proceeding with the Telegraph Act 1892 (Amendment) Bill, which was a private bill to enlarge the powers of the National Telephone Company under the provisions of the Telegraph Act of 1892, on the ground that the area affected was the whole of the United Kingdom, that the bill established a new jurisdiction, and that the powers asked for should be granted, if at all, to the Postmaster-General. But Mr. Speaker pointed out that the bill was of far narrower application than the London Valuation and Assessment Bill of 1895, and that it proposed under certain conditions and in certain places to exempt a company, carried on for purposes of profit, from the operation of a particular subsection of a public Act ; and he held that it would be in order, and in accordance with the action of the House on other occasions, that the bill should proceed as a private bill, 67 Parl. Deb. 4 s. 1335-38.

<sup>4</sup> In the "Table showing the Effect of the Year's Legislation." Cf. the volumes of 1894 (pp. 657. 666) and 1904 (pp. 139. 140).

themselves which have been passed as private bills. Nor do they now contain public Acts which are purely local in character. With regard to Acts passed prior to 1798, it is difficult to determine whether they were, in fact, public or private, the only Acts included in the latter category being estate, divorce, naturalization, and other Acts of a personal character, while Acts for the making of roads, bridges, &c., and for other local improvements, were printed with the public Acts. In 1798 the distinction between "Public General Acts" and "Local and Personal Acts" was first introduced into the Statute book; and from that year until 1868 the classification of the printed Acts into one or other of these two divisions was determined by whether they had originated as public or as private bills. But since 1868, public bills of a local character have, when passed, been printed among the local Acts of each year.<sup>1</sup>

during their passage through Parliament not identical with their classification when passed and printed as Acts.

In treating of petitions, the origin of private bills has been already glanced at (see p. 551): but it may be referred to again, in illustration of the distinctive character of such bills, and of the proceedings of Parliament in passing them. The separation of legislative and judicial functions is a refinement in the principles of political government and jurisprudence, which can only be the result of an advanced civilization. In the early constitution of Parliament these functions were confounded; and special laws for the benefit of private parties, and judicial decrees for the redress of private wrongs, being founded alike upon petitions, were not distinguished in principle or in form. When petitions sought obviously for remedies which the common law afforded, the parties were referred to the ordinary tribunals: but in other cases, Parliament exercised a remedial jurisdiction. Other remedies of a more judicial character, and founded upon more settled principles, were at length supplied by the courts of equity; and from the reign of Henry IV., the petitions addressed to Parliament prayed, more distinctly, for peculiar powers beside the general law of the land for the special benefit of the petitioners. Whenever these were granted, the orders of Parliament, in whatever form they may have been expressed, were in the nature of private Acts; and after the mode of legislating by bill and statute had grown up in the reign of Henry VI. (see p. 346), these special enactments were embodied in the form of distinct statutes.<sup>2</sup>

Origin of private bills.

Passing now to existing practice, the proceedings of Parliament, Peculiarity of

<sup>1</sup> As to the Classification of Local and Personal and Private Acts, see Chap.

XXXIII.

<sup>2</sup> See Stat. of the Realm, 9 Henry VI.

proceed-  
ings on  
private  
bills.

in passing private bills, are still marked by much peculiarity. A bill for the particular benefit of certain persons may be injurious to others; and to discriminate between the conflicting interests of different parties involves the exercise of judicial inquiry and determination. This circumstance causes important distinctions in the mode of passing public and private bills, and in the principles by which Parliament is guided.

The func-  
tions of  
Parlia-  
ment in  
passing  
public  
bills are  
purely  
legisla-  
tive.

In passing public bills, Parliament acts strictly in its legislative capacity: it originates the measures which appear for the public good, it conducts inquiries, when necessary, for its own information, and enacts laws according to its own wisdom and judgment. The forms in which its deliberations are conducted are established for public convenience; and all its proceedings are independent of individual parties, who may petition, indeed, and are sometimes heard by counsel, but who have no direct participation in the conduct of the business, or immediate influence upon the judgment of Parliament.

Its func-  
tions in  
passing  
private  
bills are  
partly  
judicial.

In passing private bills, Parliament still exercises its legislative functions, but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted appear as suitors for the bill; while those who apprehend injury are admitted as adverse parties in the suit. Many of the formalities of a court of justice are maintained; various conditions are required to be observed, and their observance to be strictly proved; and if the parties do not sustain the bill in its progress, by following every regulation and form prescribed, it is not forwarded by the house in which it is pending. If they abandon it, and no other parties undertake its support,<sup>1</sup> the bill is lost, however sensible the house may be of its value. The analogy which all these circumstances bear to the proceedings of a court of justice, is further supported by the payment of fees (see p. 804), which is required of every party promoting or opposing a private bill, or petitioning for or opposing any particular provision. It may be added that the solicitation of

<sup>1</sup> Cf. p. 732, as to "Parties not proceeding." In 1828, the Manchester and Salford Improvement Bill was abandoned, in committee, by its original promoters; when its opponents, having succeeded in introducing certain amendments, undertook to solicit its further progress. In another case, the committee would not allow this course to be taken (Minutes, 1859, iii. 84, Cork Butter Market Bill). In

1873, the committee on the Kingstown Township Bill, after the commissioners, under their corporate seal, had withdrawn from its promotion, refused to allow them to proceed with it, as individuals (see p. 725). In the Horncastle Gas Bill, 1876, the promoters and opponents came to an agreement in committee by which the opponents paid the promoters' costs and were given the conduct of the bill.

a bill in Parliament has been regarded, by courts of equity, so completely in the same light as an ordinary suit, that the promoters have been restrained, by injunction, from proceeding with a bill, the object of which was held to be to set aside a covenant;<sup>1</sup> or which was promoted by a public body, in evasion of the Towns Improvement Act, 1847.<sup>2</sup> Parties have also been restrained, in the same manner, from appearing as petitioners against a private bill pending in the House of Lords.<sup>3</sup> Such injunctions have been justified on the ground that they act upon the person of the suitor, and not upon the jurisdiction of Parliament; which would clearly be otherwise in the case of a public bill. And acting upon the same principles, Parliament has obliged a railway company, under penalty of a suspension of its dividends, to apply in the next session for a bill to authorize the construction of a line of railway which the company had pledged itself to make, and in good faith to promote it (see p. 728).

This union of the judicial and legislative functions is not confined to the forms of procedure, but is an important principle in the inquiries and decision of Parliament, upon the merits of private bills. As a court, it inquires into, and adjudicates upon, the interests of private parties; as a legislature, it is watchful over the interests of the public. The promoters of a bill may prove, beyond a doubt, that their own interests will be advanced by its success, and no one may complain of injury or urge any specific objection; yet, if Parliament apprehends that it will be hurtful to the community, it is rejected as if it were a public measure, or qualified by restrictive enactments, not solicited by the parties. In order to increase the vigilance of Parliament, in protecting the public interests, the Chairman of Committees in the House of Lords, and the Chairman of Ways

Principles  
by which  
Parlia-  
ment is  
guided.

<sup>1</sup> *Heathcote v. North Staffordshire Railway Co.* (1850), 6 Ry. and Can. Cas. 358; *Stockton, &c., Railway Co. v. Leeds and Thirsk and Clarence Railway Companies*, 5 Ry. and Can. Cas. 691. On the 27th May, 1869, the directors of the London, Chatham, and Dover Railway Company were restrained by Vice-Chancellor Stuart from further promoting a bill, which had already passed the Commons, and had been read a first time in the House of Lords, and from using the seal of the company for any such or the like purpose (*Times* newspaper, 28th

May, 1869). But on the 31st May, the lords justices discharged this order as not being justified by the circumstances of the case, while they acknowledged the authority of the court to make such an order, if the occasion should warrant it. *Hartridge, Ex parte, London, Chatham, and Dover Railway, In re*, 5 Ch. App. 671.

<sup>2</sup> *Kingstown Township Bill, 1873*; see p. 725.

<sup>3</sup> 100 H. D. 3 s. 784 (*Hartlepool Junction Railway*).

and Means in the House of Commons, are entrusted with the peculiar care of unopposed bills, and with a general revision of all other private bills (see pp. 624-6, 667-8, 750); while the agency of the government departments is also applied in aid of the legislature (see p. 668).

Private bills pass through the same stages as public bills.

In pointing out this peculiarity in private bills, it must, however, be understood that, while they are examined and contested before committees and officers of the house, like private suits, and are subject to notices, forms, and intervals, unusual in other bills; yet in every separate stage, when they come before either house, they are treated precisely as if they were public bills.<sup>1</sup> They are read as many times, and similar questions are put, except when any proceeding is especially directed by the standing orders; and the same rules of debate and procedure are maintained throughout.

Necessity for private bills superseded in some cases.

In order to explain clearly all the forms and proceedings to be observed in passing private bills, it is proposed to state them, as nearly as possible, in the order in which they successively arise; but before doing so it is necessary to advert briefly to the important modern legislation, by which the necessity for private bills has, in numerous cases, been superseded by general laws. As a result of the policy pursued in this respect by the legislature, parties are now enabled, for a large number of various purposes, to avail themselves of the provisions of public general Acts, instead of having to apply for special powers by the means of a private bill. This policy has been carried out (a) by amendments in the general law which have facilitated various kinds of objects or furthered particular classes of undertakings or interests; (b) by the establishment and extension of the system of "Provisional Orders"; and (c) by the passing, in 1899, of the Private Legislation Procedure (Scotland) Act.

By general law.

The following are some of the principal general Acts relating to matters which formerly have been the subjects of private Acts of Parliament, viz. the Tithe Commutation Acts, the Acts for the enfranchisement of copyholds, the Joint-Stock Companies Acts, the Acts for the regulation and management of railway companies, the Settled Estates and Settled Land Acts, the Acts relating to entail in Scotland, the Towns Improvement (Ireland) Act, the Incumbered Estates Act in Ireland, the Endowed Schools Acts, the Naturalization

<sup>1</sup> Cf. for example, 160 C. J. 405, 8th Aug., 1905, when the consideration of the Lords' amendments to a private bill stood

adjourned, on the interruption of business, under Standing Order (relative to Public Business) No. 1 (Sittings of the House).

Act, the Divorce and Matrimonial Causes Acts, the Education Acts, the Municipal Corporation Acts, the Local Government Acts for England and Wales, Scotland, and Ireland.

By the various statutes which authorize procedure by Provisional Order, many of the Government departments, and in some cases a local authority, are empowered to grant provisional orders, which are practically bills and which have only to be confirmed in an Act of Parliament in order to become law. In most cases, these orders confer powers or secure objects for which a private bill was formerly necessary; and in a later chapter (Chapter XXXI.) it is proposed to summarize the purposes for which provisional orders may be granted, the statutes under which various authorities are empowered to grant them, and the procedure in Parliament upon the bills for their confirmation. It should, however, be observed here that, in addition to their powers of granting provisional orders, many government departments have also been invested with powers of administration in matters which otherwise would have been the subject of special legislation, and are empowered, in numerous cases, to grant orders which are not provisional, that is to say, which do not require confirmation in an Act of Parliament.

By the Private Legislation Procedure (Scotland) Act which was passed in 1899, parties have been provided with a new means of obtaining parliamentary powers in regard to almost every matter "affecting public or private interests in Scotland for which they are entitled to apply" by means of a private bill. The special machinery which has thus, in so large a class of cases, taken the place of procedure by private bill, centres in the powers conferred by the Act, upon the Secretary for Scotland, of granting orders which are subsequently confirmed by Parliament in a bill. The provisions of this Act, however, and the system which it has established, will be more conveniently dealt with later (Chapter XXXII.), after the method of passing private bills has been described.

In the ensuing chapter it is proposed to describe the proceedings preliminary to the introduction of a private bill into either house, and the duties, with regard to all such bills, of the Chairman of Committees of the House of Lords and the Chairman of Ways and Means. The course of proceedings in the Commons upon a private bill will then be followed throughout from its first introduction in that house (Chapter XXVIII.), and, subsequently, the course of proceedings in the Lords upon private ("Local") bills.

XXIX.). Those private bills, such as Naturalization, Name, Estate, and Divorce Bills, which have usually originated in the Lords, and which are known as "Personal" bills, will be more conveniently followed—in a later chapter (Chapter XXX.)—in their course from the Lords to the Commons.



## CHAPTER XXVII.

PRELIMINARY PROCEEDINGS IN CASE OF PRIVATE BILLS AND GENERAL  
SUPERVISION BY CHAIRMEN OF COMMITTEES OF BOTH HOUSES.

EXCLUDING the relatively small class of Name, Estate, and other "personal" bills (see pp. 742, 756), all private bills to which the standing orders are applicable<sup>1</sup> are divided—by the standing orders, of both houses, relative to private bills—into the two following classes according to the subjects to which they relate :—

The two classes into which private bills are divided, by S. O. 1 (in both houses).

## 1ST CLASS :—

1st Class.

Burial Ground, making, maintaining, or altering.

- Charters and Corporations, enlarging or altering powers of.
- Church or Chapel, building, enlarging, repairing, or maintaining.
- City or Town, paving, lighting, watching, cleansing or improving.
- Company, incorporating, regulating, or giving powers to.
- County Rate.

County or Shire Hall, court-house.

Crown, Church, or Corporation Property, or Property held in Trust for Public or Charitable purposes.

Electricity Supply.

Ferry, where no work is to be executed.

Fishery, making, maintaining or improving.

Gaol or House of Correction.

Gas Work.

Improvement Charge, unless proposed in connection with a Second Class

Work to be authorized by the Bill.

Land, inclosing, draining or improving.

Letters Patent.

Local Court, constituting.

Market or Market-place, erecting, improving, repairing, maintaining or regulating.

Pilotage.

Police.

Poor, maintaining or employing.

<sup>1</sup> For cases of private bills which have not been treated as name, estate, or personal bills, but in the case of which it was reported that no standing orders

were applicable, see Ascot Authority Bill [Lords], 145 L. J. 154, 168 C. J. 253; Rhodes Estate Bill [Lords], 148 L. J. 137, 171 C. J. 160.

## 614 PRIVATE BILLS—PRELIMINARIES TO INTRODUCTION.

Poor Rate.

Powers to sue and be sued, conferring.

Stipendiary Magistrate, or any Public Officer, payment of.

Trolley vehicle system. And

Continuing or amending an Act passed for any of the purposes included in this or the Second Class, where no further work than such as was authorized by a former Act is proposed to be made.

2nd Class 2ND CLASS :—

Making, maintaining, varying, extending, or enlarging any	
Aqueduct.	Motor Road.
Archway.	Navigation.
Bridge.	Pier.
Canal.	Port.
Cut.	Public Carriage Road.
Dock.	Railway.
Drainage,---where it is not provided	Reservoir.
in the Bill that the Cut shall not	Sewer.
be more than Eleven feet wide at	Street.
the bottom.	Subway.
Embankment for reclaiming Land	Tramway.
from the Sea or any Tidal River.	Tramroad.
Ferry, where any work is to be	Tunnel.
executed.	Waterwork.
Harbour.	

Private bills : how solicited and deposited. S. O. 32, 193 (H. C.); S. O. 32 (H. L.).

For every private bill—to whichever of these two classes it belongs and in whichever house it eventually is first introduced—a petition, signed by the parties (or some of them) who are suitors for the bill, must be duly deposited in the Committee and Private Bill Office<sup>1</sup> of the House of Commons on or before the 17th December, with a printed copy of the bill annexed; and a printed copy of every such bill must also be deposited, on or before the same date, in the Office of the Clerk of the Parliaments, House of Lords.

Deposit in the case of certain London County Council bills. S. O. 194, 194B (H. C.).

In the case of certain bills promoted by the London County Council under the conditions described in standing order No. 194 (see p. 597), the deposit of the petition for the bill, and other requisite deposits and notices, are fixed at the later dates mentioned in standing order No. 194B (see p. 639).<sup>2</sup>

<sup>1</sup> Since the amalgamation of the Committee Office and the Private Bill Office in 1913, the proper title of the combined offices has been the Committee and Private Bill Office. This description is used in the text although the older descriptions have not been changed in the standing orders in all cases.

<sup>2</sup> Standing orders Nos. 69 and 69B of the House of Lords, which *mutatis mutandis* correspond to standing orders 194 and 194B (House of Commons), contain provisions to meet the case of these bills if originating in the House of Lords.

In preparing their bills for deposit, the promoters must be careful <sup>Preparing bills.</sup> that no provisions be inserted which are not sufficiently alluded to in the notices, or which otherwise infringe the standing orders; and if the bill be for any of the purposes to which the provisions of any of the Clauses Acts<sup>1</sup> are applicable, these provisions must be incorporated by reference. The bill is otherwise drawn in conformity with what is known as "the Model Bill," by which the best forms are prescribed. This "Model Bill" is annually issued by the office of the Lords' Chairman of Committees, and is a collection of "model clauses" for railway, tramway, and gas and water bills, and of numerous miscellaneous clauses in common use.<sup>2</sup>

The requirements of the standing orders which are to be complied with by the promoters of private bills before application is made to Parliament, were conveniently arranged by the Commons, in 1847, in the following order; and a similar arrangement has since been adopted by the House of Lords—

- "1. Notices by advertisement. 2. Notices and applications to owners, lessors, and occupiers of lands and houses. 3. Documents required to be deposited, and the times and places of deposit.<sup>3</sup> 4. Form in which plans, books of reference, sections, and cross-sections shall be prepared. 5. Estimates and deposit of money,<sup>4</sup> and declaration in certain cases."

Compliance required with S. O., Nos. 3-68, of both houses, (a) before introduction of Private Bill (S. O. 3-59);

The requirements of the two houses, under each of these divisions,

<sup>1</sup> The principal Clauses Acts are the Companies Clauses, Lands Clauses, and Railways Clauses Acts, 1845; and the Markets and Fairs Clauses, Gasworks Clauses, Commissioners Clauses, Waterworks Clauses, Harbours and Docks Clauses, Towns Improvement Clauses, Cemetery Clauses, and Town Police Clauses Consolidation Acts, 1847. See Bigg, Clauses Consolidation Acts. Those Acts, as stated in the preambles, were passed, "as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertaking, as for ensuring greater uniformity in the provisions themselves." Some of them are amended by subsequent Acts. See also Electric Lighting (Clauses) Act, 1899. Where a bill provides for purchase of land, but not for compulsorily taking it, the Lands Clauses Acts will be incorporated "except the provisions relating to the taking of land otherwise than by agreement." The few exceptions from, and

amendments of, the Clauses Acts that are now permitted in drafting private bills are indicated in the "Model Bill."

<sup>2</sup> The "Model Bill"—drawn up as a body of precedents for the convenience of the Lords' Chairman of Committees in his examination of private bills (cf. p. 624)—was originally issued, at a period (1866-7) of great activity in railway schemes, as a "Model Railway Bill." But it has since been considerably enlarged and, annually re-edited at the close of every session by the Counsel to the Lords' Chairman, it is now of indispensable service in the promotion of private bills.

<sup>3</sup> As to the custody, and as to facilities for the inspection of, documents directed to be locally deposited under the standing orders, cf. the Parliamentary Documents Deposit Act, 1837, and standing order (Lords) No. 146.

<sup>4</sup> As to the custody of money deposits required under the standing orders, cf. the Parliamentary Deposits Act, 1846.

are now, *mutatis mutandis*, nearly identical.<sup>1</sup> Their convenient arrangement and general similarity render unnecessary their insertion in this work ; and no version of the standing orders, of either house, relating to private bills can, at any time, be safely relied upon by the promoters of bills, except the last authorized edition.<sup>2</sup>

and (b)  
after in-  
troduction  
(S. O. 60-  
68).  
In addition to the standing orders above alluded to, there are others (Nos. 60-68), the compliance with which is proved after the introduction of the bills into Parliament ; of these, No. 60 relates only to the deposit of certain bills with government departments (see p. 668), and No. 61 and Nos. 62-68 will in due course be further mentioned (see pp. 640, 641).

Compli-  
ance,  
proved  
before the  
exami-  
ners.  
Compliance with the standing orders was formerly required to be separately proved—in the Commons, before the committees on petitions for private bills ; and in the Lords, before the standing orders committee. But in 1847 the House of Commons provided, by standing order, for the appointment of one or more “ Examiners of petitions for private bills,”<sup>3</sup> instead of the committees previously appointed. A few years later, in 1854, the Lords resolved, “ That there shall be one or more officers of this house, to be called ‘ the Examiners for standing orders,’ ” to examine into certain of the facts required to be proved before their standing orders committee ; they then appointed as their Examiners the gentlemen who held the office of Examiners of petitions in the House of Commons ; and finally, in 1858, they entrusted to these officers the same powers which they had previously exercised as Examiners for the Commons. This most convenient arrangement has enabled the Examiners to take the evidence on behalf of both houses simultaneously, and has obviated the necessity for a double proof of all those orders, common to both houses, with which parties, at a heavy expense and with an interval of some months between the proofs, were formerly obliged to prove compliance twice over. The two Examiners, therefore,—appointed by the House of Lords and Mr. Speaker—now conduct

<sup>1</sup> The standing orders of both houses are numbered alike, from No. 1 to No. 68 ; but one (numbered 25C) is in the Lords’ standing orders only, and one (numbered 35A) is in the Commons’ standing orders only.

<sup>2</sup> The standing orders, of both houses, relative to private bills are amended in more or less important particulars at the close of nearly every session. Unless

otherwise specified, the standing order numbers quoted here in the text or margin, are taken from the edition of the (House of Commons) standing orders 1915.

<sup>3</sup> Standing order 2 ; and cf. report of select committee for revision of the standing orders, 1847, 102 C. J. 825. 880-896.

for both houses, the preliminary investigations formerly carried on separately in each house: they adjudicate upon all facts relating to the compliance or non-compliance with the standing orders; and, in those cases where they find that standing orders have not been complied with, the standing orders committee in each house (see pp. 633, 744) determines, upon the facts as reported by the Examiners, whether these orders ought or ought not to be dispensed with.<sup>1</sup>

When all the petitions for private bills, with printed copies of the bills annexed, have been deposited, on or before the 17th December, in the Committee and Private Bill Office of the House of Commons, and printed copies of the bills have been deposited, on or before the same date, in the Parliament Office of the House of Lords, "The General List of Petitions for Bills" is prepared. The regulations in accordance with which this list is made out give every facility to the promoters of a bill to select for themselves whatever position may be most convenient. If they secure an early number on the list, their petition will be heard by the Examiners shortly after the commencement of their sittings. If, on the other hand, they desire their case to be heard at a later period, they may place their petition lower down in the list.<sup>2</sup> Each petition is numbered according to its place in the list; and as the examination for both houses is conducted at the same time, the order in which the cases are heard for the Lords is determined by this General List, which is prescribed by the Commons only.

When the time has expired for depositing documents and complying with other preliminary conditions, parties interested are enabled to judge whether the standing orders of the two houses have been complied with. If it should appear to them that the promoters have neglected to comply with any of these orders, parties may prepare memorials, addressed to the Examiners, complaining of such

General  
List of  
Petitions  
for Bills.  
S. O. 229  
(H. C.).

Memorials  
complaining  
of  
non-compliance.

<sup>1</sup> When the Examiner has found that the standing orders have not been complied with in the case of a petition for a bill, and the standing orders committee of the house in which the bill originates have reported that they should be dispensed with, the standing orders committee of the second house do not defer their decision until the bill reaches their house, but at once consider and pronounce upon the Examiner's report also. By adopting this course they obviate the possibility of a promoter proceeding with his bill

through the first house and then finding its subsequent progress barred by their giving a different decision, upon its reaching the second house, to that of the standing orders committee in the first. In practice, the view taken by both committees in these cases has, as a rule, been the same.

<sup>2</sup> Regulations made by Mr. Speaker for the deposit of petitions and for determining the order in which they will be heard by the Examiner; and S. O. Nos. 69 and 229 (House of Commons).

non-compliance. These memorials are to be deposited in the Committee and Private Bill Office of the House of Commons, according to the position of the petition for the bill to which they relate, in the general list.

“ If the same relate to petitions for bills numbered in the general list of petitions ;

From

1 to 100	} They shall be deposited on or before {	Jan. 9.
101 to 200		„ 16.
201 and upwards		„ 23.” <sup>1</sup>

Memorials complaining of non-compliance are prepared in the same form, and are subject to the same general rules, as petitions to the house (see p. 552), as well as to other special rules, which will be noticed immediately (pp. 620, 621).

Sittings of  
the Ex-  
aminers.  
S. O. 69  
(70 H. L.).

The public sittings of the Examiners commence on the 18th January, being about a fortnight before the usual time for the meeting of Parliament ; and the petitions for bills are set down for hearing in the order in which they stand in the General List.

Notice of  
examina-  
tion.

One of the Examiners is required to give at least seven days' notice, in the Committee and Private Bill Office of the Commons, of the day appointed for the examination of each petition.<sup>2</sup>

Daily lists  
of cases  
disting-  
uishing  
opposed  
and un-  
opposed  
petitions  
for bills.

Daily lists are issued of the cases set down for hearing before each of the Examiners according to their order in the general list of petitions for bills ; but to expedite the examination of the unopposed petitions for bills, the cases set down are divided, in this daily list, into “ unopposed ” and “ opposed ” petitions, the former being placed first on each day. By this arrangement all the cases are appointed to be heard according to their order in the General List : but by precedence being given, on each day, to the unopposed petitions, the numerous agents and witnesses are relieved from attendance during the subsequent hearing of opposed cases, which often occupy a considerable time.

Re-inser-  
tion of  
petitions

In case the promoters shall not appear at the time when their petition comes on to be heard, the Examiner is required to strike the

<sup>1</sup> S. O. No. 230 (House of Commons), and cf. rules appended to the Lords' standing orders.

<sup>2</sup> Standing order 70 (House of Commons). Practically a longer notice than this is given in the case of those petitions (the second and third hundred on the list) respecting which memorials are

deposited on or before the 16th or 23rd January ; as on the 10th January—that is to say, on the day after the memorials relating to the first hundred petitions have been deposited—the Examiners, for the convenience of all parties concerned, intimate when they will take the remaining petitions.

petition off the general list of petitions. The petition cannot afterwards be reinserted on the list, except by order of the house ; and should the promoters desire to proceed with the bill, it will be necessary to deposit a petition, praying that the petition for the bill may be reinserted, and explaining the circumstances under which it had been struck off. This petition will stand referred to the standing orders committee, who will determine, upon the statement of the parties, whether the promoters have forfeited the right to proceed or not, and will report to the house accordingly ; <sup>1</sup> and if by the order of the house the petition for the bill should be reinserted in the general list, the usual notice will be given by the Examiner, and the case will be heard at the appointed time.

struck off  
the list.  
S. O. 70.  
96. 200  
(H. C.).

When the case is called on, the agent soliciting the bill appears before the Examiner with a " statement of proofs," showing all the requirements of the standing orders, applicable to the bill, which have been complied with, and the name of every witness, opposite each proof, who is to prove the matters stated therein. If the bill be opposed on standing orders, the agents for the memorialists are required to enter their appearances <sup>2</sup> upon each memorial, at this time, in order to entitle them to be subsequently heard.

Statement  
of proofs.

In the mean time the " formal proofs," as they are termed, proceed generally in the same manner, both in opposed and unopposed cases. Each witness is examined by the agent, and produces all affidavits and other necessary proofs, in the order in which they are set down in the statement ; <sup>3</sup> and in addition to the proofs comprised in the statement, the examiner requires such other explanations as he may think fit, to satisfy him that all the orders of the house have been complied with.

Formal  
proofs.

Under the standing orders of both houses, the Examiner—

" may admit affidavits in proof of the compliance with the standing orders, or may require further evidence ; and such affidavits shall be sworn, if in England or in Ireland, before a justice of the peace, or a commissioner for oaths ; and if in Scotland, before any sheriff depute or his substitute, or a justice of the peace."

Proof by  
affidavit.  
S. O. 76  
(77 H. L.).

In an unopposed case the Examiner can at once give his decision whether the standing orders have, or have not, been complied with, and endorse the petition for the bill accordingly.

Unopposed  
cases.

<sup>1</sup> 129 C. J. 73.

<sup>2</sup> The appearance is a paper, which is previously obtained from the Committee and Private Bill Office, certifying that the agent has entered himself at that office as agent for the memorial. This

appearance is given to the clerk to the Examiners (see also p. 629).

<sup>3</sup> One fair copy of such statement is required for the Examiner, and another for the clerk to the Examiners.

Opposed cases.

In an opposed case, when the formal proofs have been completed, the examiner proceeds to hear the memorialists. The agents for the latter ordinarily take no part in the proceedings upon the formal proofs : but if they desire that any of the promoters' witnesses, who have proved the deposit of documents, the service of notices, or other matters, should be detained for further examination, in reference to allegations of error, contained in the memorials, the examiner directs them to be in attendance until their evidence shall be required.

Attendance of witnesses.

The attendance of witnesses is ordinarily secured by the parties themselves : but if the examiner should report to the house that the attendance of any necessary witness, or the production of any document, cannot be procured without the intervention of the house, the house will make an order accordingly.<sup>1</sup>

Memorials complaining of non-compliance.

S. O. 74 (H. C.) (73 H. L.) and S. O. 75 (H. C.) (74 H. L.).

Any parties are entitled to appear and to be heard, by themselves, their agents and witnesses, upon a memorial, addressed to the Examiner and duly deposited, complaining of non-compliance with the standing orders, provided that the matter complained of be specifically stated in such memorial, that the party (if any) who may be specially affected by the non-compliance with the standing orders shall have signed such memorial and shall not have withdrawn his signature thereto, and that such memorial shall have been duly deposited. In the case of certain bills which are referred to the Examiners under the "Wharfedale" standing orders (Nos. 62-66) of both houses (pp. 640, 744), any proprietor, shareholder, or member of or in any company, society, association, or co-partnership, who shall by himself, or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of these standing orders, shall be permitted to be heard by the Examiner on the compliance with such standing order, by himself, his agents and witnesses, upon a memorial addressed to the Examiner, and duly deposited.

Deposit of memorials in case of late bills.

S. O. 230 (H. C.).

The dates for depositing memorials complaining of non-compliance, in the case of petitions for bills numbered in the General List, have already been stated ; and in the case of any petitions for bills which may be deposited by leave of the house after the 17th December, standing order No. 230 of the House of Commons provides that—

"such memorials shall be deposited three clear days before the day first appointed for the examination of the petition." <sup>2</sup>

<sup>1</sup> Wandle Water and Sewerage, 108 114. 127.

C. J. 257 ; Bristol and North Somerset Railway (Southern Extension), 121 ib.

<sup>2</sup> In the event of this period expiring during an adjournment of the house



Under standing order No. 231 of the House of Commons—

Time for  
deposit of  
me-  
morials.

"All memorials shall be deposited in the Private Bill Office<sup>1</sup> before five of the clock in the evening of any day on which the house shall sit, and between eleven and one of the clock on any day on which the house shall not sit; and two copies of every such memorial shall be deposited for the use of the Examiners, before twelve of the clock on the following day."

In the Lords, the time within which memorials are to be deposited in the case of bills numbered in the General List is not prescribed by the standing orders of that house: but the Examiners require parties to conform substantially with the orders of the Commons,<sup>2</sup> it being indispensable that memorials should be heard, on behalf of both houses, at the same time. The time for depositing memorials complaining of non-compliance is prescribed in both houses, however, in the case of petitions for additional provision (see pp. 642, 743), and in either house in certain other cases.<sup>3</sup>

S. O. 232  
(H. C.);  
75 (H. L.).

Unless the matters complained of be specifically stated in the memorial, the memorialists are not entitled to be heard, and the utmost care is consequently required in drawing memorials. When a memorial complains of more than one breach of the standing orders, it is divided into distinct allegations. Each allegation should specifically allege a non-compliance with the standing orders, and should state the circumstances of such alleged non-compliance, in clear and accurate language.

Specific  
state-  
ments of  
non-com-  
pliance.

When the agent for a memorial rises to address the Examiner, the agent for the bill may raise preliminary objections to his being heard upon the memorial, on any of the grounds referred to in the standing orders, or on account of violations of the rules and usage of Parliament, or other special circumstances. Such objections are distinct from any subsequent objections to particular allegations. It has been objected, for example, that a memorial has not been duly signed, so as to entitle the parties to be heard. No proof of the signatures, however, is required in any case, unless there should be some *prima facie* reason for doubting their genuineness. The same rule is applied to the fixing of a corporate seal.

Prelimi-  
nary ob-  
jections.

other than an adjournment from Friday to the following Monday, the time is extended to the first day on which the house sits after the adjournment, standing order 224 A.

<sup>1</sup> See p. 614, n. 1.

<sup>2</sup> Cf. the rules appended to the standing orders of the Lords.

<sup>3</sup> Viz. in the case of bills referred to the Examiners after first reading in the Lords (S. O. (H. L.) 75); and, in the Commons, in the case of bills brought from the Lords or introduced in lieu of others withdrawn (S. O. (H. C.) 232).

Memorials  
subject to  
same rules  
as peti-  
tions.

On the 16th February, 1846, an instruction was given to the committee on petitions for private bills (the predecessors of the Examiners) not to hear parties on any petition "which shall not be prepared in strict conformity with the rules and orders of this house."<sup>1</sup> And as memorials addressed to the Examiner have supplied the place of petitions to the house, complaining of non-compliance with the standing orders, the Examiners have applied to them all the parliamentary rules applicable to petitions (see p. 552); and have otherwise followed the practice of the committees on petitions for private bills.

Prelimi-  
nary ob-  
jections to  
allegations.

If no preliminary objection be taken to the general right of the memorialists to appear and be heard, or if it be overruled, the agent proceeds to read the first allegation in his memorial. Preliminary objections can be raised to any allegation; as that it alleges no breach of the standing orders; that it is uncertain, or not sufficiently specific; or that the party specially affected has not signed the memorial, or has withdrawn his signature. In reference to the latter grounds of objection, it may be explained that by numerous decisions of the committees on petitions for bills and of the Examiners, the signatures of parties specially affected are required in reference to such allegations only as affect parties personally, and in which the public generally have no interest. Thus if it be alleged that the name of any owner, lessee, or occupier of property has been omitted from the book of reference, or that he has received no notice, the Examiner will not proceed with the allegation, unless the party affected has himself signed the memorial. But in the application of this rule, considerable niceties often arise from the peculiar circumstances of each case.

Objections on  
points  
affecting  
the public.

There are numerous grounds of objection which relate to matters concerning the public, and do not therefore require the signatures of parties specially affected. Thus objections to the sufficiency of newspaper notices, and objections to the accuracy of the plans, sections, and books of reference where the errors alleged are patent upon such documents, or are separable from questions relating to property in lands and houses, have always been treated as public objections. The same principle has been applied to objections to the estimate, deposit of money, or declaration; and to allegations that any documents have not been deposited in compliance with the standing orders. It is for public information and protection that all

<sup>1</sup> 101 C. J. 147.

requirements of this character are to be complied with by the promoters of the bill; and any person is therefore entitled to complain of non-compliance on behalf of the public, without proving any special or peculiar interests of his own.

Allegations are to be confined to breaches of the standing orders, and may not raise questions impugning the merits of the bill, which are afterwards to be investigated by Parliament and by committees of both houses. It may be shown, for example, that an estimate is informal, and not such an estimate as is required by the standing orders: but the insufficiency of the estimate is a question of merits, over which the Examiner has no jurisdiction. Again, in examining the accuracy of the section of a proposed railway, the Examiner will inquire whether the surface of the ground be correctly shown, or the gradients correctly calculated: but he cannot entertain objections which relate to the construction of the work, its engineering advantages, its expense, or other similar matters, which will be afterwards considered by the committee on the bill.

The Examiner decides upon each allegation, explaining to parties, whenever it is necessary, the grounds of his decision; and he certifies by endorsement on each petition whether the standing orders have or have not been complied with. The petitions, when endorsed, are returned to, and retained in, the Committee and Private Bill Office of the House of Commons.

When Parliament has met, the decisions of the Examiners upon the petitions for private bills are communicated to both Houses in the following form. In every case of non-compliance, the Examiner certifies his decision to the House of Lords, and reports it to the House of Commons.<sup>1</sup> He also certifies his decision to the House of Lords in every case where he has found that the standing orders have been complied with. But to the House of Commons, in cases of compliance, he only reports his decision with regard to those bills that originate in the Lords; as, in the case of bills originating in the Commons upon which the standing orders have been complied with, his endorsement to this effect upon the petitions for these bills is taken as being his report to that house. In every case where he has decided that the standing orders have not been complied with, the Examiner must also certify to the Lords, and report to the Commons,

Questions  
of merits  
excluded.

Decisions  
of the Ex-  
aminers  
endorsed  
on peti-  
tion.  
S. O. 71  
(H. C.).

Communi-  
cation of  
Ex-  
aminers'  
decisions  
to both  
Houses.  
S. O. 77  
(H. C.); 76  
(H. L.).

<sup>1</sup> In practice the Examiner also appends to this report a list of those Lords' bills with regard to which he has certified to

the Lords that the standing orders have not been complied with. Cf. *e.g.* Hastings Tramways 1905 (160 C. J. 16), &c.

the facts upon which his decision is founded, and any special circumstances connected with the case.

Special  
report  
from Ex-  
aminers.

S. O. 78.  
94 (H. C.);  
78. 84  
(H. L.).

Introduc-  
tion of  
private  
bills.

Manner  
of deter-  
mining in  
which  
house a  
private  
bill shall  
originate.

General  
super-  
vision of  
all private  
bills.

By the  
Lords'  
Chairman  
and his  
Counsel.

Under standing orders in both houses—

"in case the Examiner shall feel doubts as to the due construction of any standing order in its application to a particular case, he shall make a special report of the facts, without deciding whether the standing order has, or has not, been complied with ;"

and this report is referred to the Standing Orders Committee.<sup>1</sup>

The preliminary proceedings before the Examiner having been summarized, the manner of determining in which house each private bill shall be first introduced must also be described.

In accordance with standing order No. 79 of the House of Commons, the Chairman of Ways and Means, or the Counsel to Mr. Speaker, on or before the 28th January, in each year, seeks a conference with the Chairman of Committees of the House of Lords, or with his Counsel, for the purpose of determining in which house the respective private bills shall be first considered.<sup>2</sup> The examination of all private bills by these authorities, however, may be said to commence at an even earlier date—as soon as the bills are deposited in December. And throughout their subsequent stages in both houses, all private bills are under the supervision of the Lords' Chairman and the Chairman of Ways and Means.

This supervision of private bills by responsible officers originated in the Lords, but it will be convenient to advert to it generally at this point.

The office of Chairman of Committees in the Lords was first constituted in 1800, when the house resolved that it would, "at the commencement of every session, proceed to nominate a Chairman of Committees of this house."<sup>3</sup> And according to a further resolution, which was passed at the same time, and is now embodied in

<sup>1</sup> Great Grimsby Street Tramways Bill, 1900. A special report from the Examiner regarding this bill, proposed to originate in the Lords, was sent in to that house together with the Examiner's certificate on the bill (15th Feb.), and stood referred to the standing orders committee there, in accordance with standing orders 78 and 84 (House of Lords). In the Commons the report was laid on the table and referred to the standing orders committee in that house (26th Feb.). In this case both committees reported (Lords, 5th March; Commons, 13th

March) that the standing orders had been complied with, 132 L. J. 36. 70; 155 C. J. 64-5. 95. For similar proceedings in the case of a provisional order bill, see 146 L. J. 91. Cf. also p. 634, note 3. For standing orders committees see p. 633 (House of Commons) and p. 744 (House of Lords).

<sup>2</sup> This power having been delegated to the Chairmen of Committees, their decision as to the house in which a bill shall originate is final (Mr. Speaker's ruling, 78 Parl. Deb. 4 s. 695).

<sup>3</sup> 42 J. J. 636.

No. XLI. of the Lords' standing orders, the lord so nominated "shall take the chair in all committees upon private bills unless where it shall have been otherwise directed by this house."<sup>1</sup> So far as they are conferred upon him by this and other standing orders, the power and duties of the Lords' Chairman in regard to private bills will be noticed in due course (see p. 744 *et seq.*). The practical character which his supervision of all private bills has acquired, however, is rather attributable, in part to the fact that it was exercised for fifty years before the House of Commons, in 1851, adopted a similar system—in part, also, to the duty, which in practice has long rested primarily with the Lords' Chairman, of moving the several stages of private bills in that House. When he moves the second or third reading of a bill, his action is an assurance to the house that in his opinion there is no objection to the passing of that particular stage. If he entertains such an objection, the stage is moved by another lord, the Chairman stating his objection in the course of debate before the sense of the house is taken.<sup>2</sup>

To facilitate his examination of private bills,<sup>3</sup> copies are supplied to the Lords' Chairman and his Counsel,<sup>4</sup> upon its first deposit, of every private bill proposed to be introduced into either house. Copies are again supplied to them of the bill, in its "filled-up" form<sup>5</sup> as proposed by the promoters to be submitted to a Committee, and at every other stage upon which it is amended, or proposed to be amended, in either house. In the case of a bill originating in the Commons this practice is greatly for the convenience of promoters. It enables them to give effect, during the progress of their bill through that house, to the observations of the Lords' Chairman and his Counsel; and, unless the bill be opposed, its subsequent progress through the House of Lords is at once easy and expeditious owing to

Copies of bills introduced into either house supplied to Lords' Chairman.

<sup>1</sup> As to the appointment of other peers to take the place of the chairman during his absence through illness, see pp. 406, n. 1, and 750.

<sup>2</sup> Moreover, if any lord opposes the second or third reading of a private bill, the stage is moved by another lord—not by the Chairman, who is thus left free to express his opinion in debate. Cf. 153 Parl. Deb. 4 s. 1053; 14 H. L. Deb. 5 s. 91. Since the appointment of a deputy chairman in the House of Commons (see p. 407), the stages of all private bills in that house, whether opposed or un-

opposed, have been moved by the chairman of committees or the deputy chairman instead of by an unofficial member as was formerly the case.

<sup>3</sup> As to the "Model Bill," or collection of model clauses and precedents, by which the work of the office of Chairman of Committees is materially aided, see p. 615.

<sup>4</sup> This officer was first appointed very shortly after the office of Chairman of Committees was constituted in 1800, and he became a permanent salaried officer of the house in 1808, 46 L. J. 702.

<sup>5</sup> Cf. p. 668, and S. O. (H. L.) 140b.

the facilities thus afforded, before the bill has passed the Commons, of securing the insertion of amendments suggested by the authorities in the Lords. Another advantage of this mode of amending the bill, whilst it is still in the Commons, is that amendments may then be conveniently introduced, which could not be made by the Lords without infringing the privileges of the Commons.

General  
super-  
vision of  
all private  
bills by  
the Chair-  
man of  
Ways and  
Means and  
the  
Speaker's  
Counsel.  
*S. O. 80*  
(H. C.).

For many years after this supervision of private bills had been instituted in the Lords, the House of Commons, relying upon the aid which its legislation received from the other house, did not adopt any similar arrangement of its own: but, as private business increased in importance, the house gradually entrusted to the Chairman of Ways and Means many duties analogous to those performed by the Chairman of Committees in the House of Lords; and he is now charged with the supervision of all private bills. Under standing order No. 80 of the House of Commons, it is his duty, with the assistance of the Counsel to Mr. Speaker,<sup>1</sup> to examine all such bills, whether opposed or unopposed, and to call the attention of the house, and also of the chairman of the committee on every opposed private bill, to all points which may appear to him to require it. To facilitate this examination, copies of every bill as originally deposited are required to be laid before him and Mr. Speaker's Counsel not later than the day after the Examiner of Petitions shall have indorsed the petition for the bill. And copies of every bill, and of amendments made or proposed to be made in it, are also required under standing orders Nos. 82, 84, 85, and 86, to be laid before him and the Speaker's Counsel, at various later stages in its progress. The Chairman's duties and powers under these and other standing orders (Nos. 81, 83, 215, and 216) will be noticed when these later stages are described. His preliminary duty under standing order No. 79, in determining the house in which each private bill shall originate, is all that need be noted here.

*S. O. 81-  
86, 215,  
216*  
(H. C.).  
*S. O. 79*  
(H. C.).

Division  
of bills  
between  
the two  
houses

Formerly, by far the greater number of private bills were necessarily introduced first in the House of Commons; as, by the privileges of the Commons, every bill which involves any pecuniary charge

<sup>1</sup> This officer was originally appointed to assist Mr. Speaker generally in any legal questions coming before him and to discharge certain other duties in accordance with the Report of a Select Committee of 1838. But it was not until 1851, as a result of another select committee in

that year, that he was regularly associated with the Chairman of Ways and Means to assist in the examination of private bills. Cf. Reports of the Select Committees (House of Commons) on Private Business 1838 and 1851, and Clifford, ii. 799.

or burthen on the people, by way of tax, rate, toll, or duty, ought to be first brought into that house (see p. 509). But, in accordance with a resolution which has been made a standing order, the House of Commons does not now insist upon its privileges, "with regard to any clauses in private bills, or in bills to confirm any provisional orders or provisional certificates, sent down from the House of Lords, which refer to tolls and charges for services performed, and are not in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes" (see p. 514).<sup>1</sup> This relaxation of the privileges of the Commons has made it possible for many bills to be introduced into the Lords which would formerly have had to be brought first into the Commons; and Parliament is now able to ensure a more equal distribution, between the two houses, of the private business of the session. Under the division annually made by the two Chairmen and their Counsel, the private bills proposed to be introduced are now divided, therefore, as equally as possible between the two houses. And it is usually arranged that bills relating to the Metropolis or to the release of parliamentary deposits forfeited to the Crown, and the majority of bills relating to police and sanitary regulations and local government provisions should originate in the Commons: that bills, on the other hand, which deal with the financial affairs of public companies, or with patents, should be first considered in the House of Lords: <sup>2</sup> that competing bills should be introduced in one and the same house so as to be considered together; and, generally, that all the bills should, as far as possible, be allocated with a view to convenience of handling.

The persons by whom the promotion of private bills, and the conduct of proceedings upon petitions against such bills, are actually carried out, are parliamentary agents; and the conference between

before introduction.

S. O. 216  
(H. C.).

<sup>1</sup> This resolution has been held to extend to turnpike, harbour, drainage, and other similar bills (cf. Reading and Hatfield Road Bill, 1858; Wexford Harbour Bill, 1861; Melton Mowbray Navigation Bill, 1877; Dearne Valley Water Bill, 1880); but not to "hybrid" bills (cf. Leo River Conservancy Bill, 1868). It has been ruled not to extend to clauses in an improvement bill, which proposed to impose a tax upon all insurance companies having policies upon houses within the borough. On the 8th May, 1873, the Speaker called attention to clauses of this character in

the Bradford Improvement Bill, which had been brought from the House of Lords: but "as the promoters were not responsible for the introduction of the bill into the other house, and had signified their intention to withdraw these clauses, he submitted to the house that this course would be sufficient, under the circumstances, to repair the irregularity." And upon this condition the bill was allowed to proceed, 128 C. J. 194, 215 H. D. 3 s. 1676.

<sup>2</sup> Name, Estate, and other "Personal" bills originate in the Lords. Cf. p. 742 and Chapter XXX.

the two Chairmen or their Counsel in January is attended by the agents concerned in the bills proposed to be introduced into either house.

Rules relating to Parliamentary agents.

Upon all parliamentary agents various duties and responsibilities are imposed by the orders of both houses ; and in both houses the following rules are to be observed by the officers of the house, and “ by all parliamentary agents and solicitors engaged in prosecuting proceedings in the House upon any petition or bill.”<sup>1</sup>

1. “ No person shall be allowed to act as a parliamentary agent until he shall have subscribed a declaration before one of the clerks in the Private Bill Office, engaging to observe and obey the rules, regulations, orders, and practice of the House of Commons, [Lords] and also to pay and discharge from time to time, when the same shall be demanded, all fees and charges due and payable upon any petition or bill upon which such agent may appear ; and after having subscribed such declaration and entered into a recognizance or bond (if hereafter required), in the penal sum of 500*l.*, with two sureties of 250*l.* each, to observe the said declaration, such person, if in other respects qualified to act as hereinafter provided, shall be registered in a book to be kept in the Private Bill Office, and shall then be entitled to act as a parliamentary agent : provided that upon the said declaration, recognizance or bond and registry, no fee shall be payable.”

2. “ The declaration before mentioned, and the recognizance and bond, if hereafter required, shall be in such form as the Speaker [*in the Lords* : the Chairman of Committees] may from time to time direct.”

3. “ One member of a firm of parliamentary agents may subscribe the required declaration, or enter into the required recognizance or bond, on behalf of his firm ; but the names of all the partners of such firm shall be registered with such declaration ; and notice shall be given, from time to time, to the clerks of the Private Bill Office, of any addition thereto, or change therein.”

4. “ No person shall be allowed to be registered as a parliamentary agent, unless he is actually employed in promoting or opposing some private bill or petition pending in Parliament.”

5. “ When any person (not being a solicitor or writer to the signet) applies to qualify himself for the first time to act as a parliamentary agent, such application shall be made in writing, and he shall produce to one of the clerks of the Private Bill Office a certificate of his respectability from a member of Parliament, or a justice of the peace, or a barrister-at-law, or a solicitor.”

6. “ No person's name shall be printed on any private bill, as parliamentary agent for such bill, unless and until his name has been duly inscribed upon the register of parliamentary agents.”

7. “ No notice shall be received in the Private Bill Office for any proceeding upon a petition or bill, until an appearance to act as the parliamentary agent upon the same shall have been entered in the Private Bill Office ; in which

<sup>1</sup> These rules were originally laid down —by the Speaker by authority of the Commons—in 1837 (92 C. J. 113 ; and 91 ib. 819). They have subsequently been revised, and they are quoted here

in the form in which they were issued (by Mr. Speaker in the Commons, and by the Chairman of Committees in the Lords) in August, 1905.



appearance shall also be specified the name of the solicitor (if any) for such petition or bill."

8. "Before any person desiring to appear by a parliamentary agent shall be allowed to appear or be heard upon any petition against a bill, an appearance to act as the parliamentary agent upon the same shall be entered in the Private Bill Office; in which appearance shall also be specified the name of the solicitor, and of the counsel who appear in support of any such petition (if any counsel or solicitor are then engaged), and a certificate of such appearance shall be delivered to the parliamentary agent, to be produced to the committee clerk."<sup>1</sup>

9. "Except in cases where a bill is promoted or a petition is presented by two or more companies bodies or persons separately interested, one parliamentary agent or firm of agents only shall be allowed to appear and to be heard in the proceedings on the bill on behalf of the promoters or the petitioners."

10. "In case the parliamentary agent for any petition or bill shall be displaced by the solicitor thereof, or such parliamentary agent shall decline to act, the responsibility of such agent shall cease upon a notice being given in the Private Bill Office, and a fresh appearance shall be entered upon such petition or bill."

11. "No written or printed statement relating to any private bill shall be circulated within the precincts of the House of Commons [Lords] without the name of a parliamentary agent attached to it, who will be held responsible for its accuracy."

12. "The sanction of the Chairman of Ways and Means [*in the Lords*: of the Chairman of Committees] in writing is required to every notice of a motion prepared by a parliamentary agent, for dispensing with any sessional or standing order of the house."

13. "A parliamentary agent shall not divide with or pay to any client, or any solicitor, clerk, officer, or servant of any client, any moneys which the agent at any time receives in respect of his costs charges and expenses in promoting opposing or otherwise dealing with any bill or Provisional Order, or give any commission or gratuity to any person in respect of his employment as a parliamentary agent."

14. "Every parliamentary agent and solicitor conducting proceedings in Parliament before the House of Commons [Lords] shall be personally responsible to the house, and to the Speaker [*in the Lords*: the Chairman of Committees], for the observance of the rules, orders, and practice of Parliament, as well as of any rules which may from time to time be prescribed by the Speaker [the Chairman of Committees], and also for the payment of the fees and charges due and payable under the standing orders."

15. "Any parliamentary agent who shall wilfully act in violation of the rules and practice of Parliament, or of any rules to be prescribed by the Speaker [*in the Lords*: by the Chairman of Committees], or who shall be guilty of professional misconduct of any kind as a parliamentary agent, shall be liable to an absolute or temporary prohibition to practise as a parliamentary agent, at the pleasure of the Speaker [the Chairman of Committees]: provided that upon the application of the parliamentary agent, the Speaker [the Chairman of Committees] shall state in writing the grounds for the prohibition."

16. "No person who has been suspended or prohibited from practising as a parliamentary agent, or struck off the roll of solicitors, or disbarred by any of

<sup>1</sup> See pp. 698 and 714.

the inns of court, shall be allowed to be registered as a parliamentary agent, without the express authority of the Speaker [*in the Lords* : of the Chairman of Committees].”

Registry  
of agents.

The name, description, and place of residence of the parliamentary agent in town, and of the agent in the country (if any), soliciting a bill, are entered in the “private bill register,” in the Committee and Private Bill Office, which is open to public inspection.

Members  
and  
officers of  
the house  
disquali-  
fied as  
agents.

Besides these regulations, there are certain disqualifications for parliamentary agency. Members may not be agents; and, in compliance with a recommendation of a select committee of the House of Commons of 1835, no officer or clerk belonging to the establishment is allowed to transact private business before the house, for his emolument or advantage, either directly or indirectly.<sup>1</sup>

<sup>1</sup> Parl. Pap. (H. C.) sess. 1833, No. 648, p. 9; *ib.* sess. 1835, No. 606, pp. 17. 19. Cf. also 85 C. J. 107; Clifford, ii. 878; and

Report, etc., of Joint Committee on Parliamentary Agency, Parl. Pap. (H. C.) sess. 1876, No. 360.

## CHAPTER XXVIII.

COURSE OF PROCEEDINGS UPON PRIVATE BILLS IN THE HOUSE OF COMMONS ; WITH THE RULES, ORDERS, AND PRACTICE APPLICABLE TO EACH STAGE OF SUCH BILLS IN SUCCESSION, AND TO PARTICULAR CLASSES OF BILLS.

THE proceedings in the House of Commons upon a private bill will now be followed, step by step from its first introduction into that house, precisely in the order in which particular rules are to be observed by the parties or enforced by the house or its officers : but this statement of the various forms of procedure may be introduced by a few observations explanatory of the general conduct of private business in the House of Commons.

It has been stated elsewhere, that the public business for each day is set down in the order book, either as notices of motions or orders of the day : but the notices in relation to private bills are not given by a member, nor entered in the order book except in the case of any special proceedings, but are required to be delivered at the Committee and Private Bill Office, at specified times, by the agents soliciting the bills. These notices will each be described in their proper places : but one rule applies to all of them alike—they must be delivered before five o'clock in the evening of any day on which the house shall sit ; and between eleven and one on any day on which the house shall not sit ; and after any day on which the house has adjourned beyond the following day, no notice may be given for the first day on which it shall sit again.

If any stage of a bill be proceeded with when the notice has not been duly given, or the proper interval allowed, or if notice be taken of any other informality, such proceeding will be null and void, and the stage must be repeated.<sup>1</sup>

All notices are open to inspection in the Private Bill Office : but for the sake of greater publicity and convenience, they are also printed with the votes ; and members and parties interested are thus

<sup>1</sup> 100 C. J. 423 ; 101 ib. 167 ; 106 ib. 75 ; 107 ib. 157 ; 122 ib. 66 ; 133 ib. 61 ; 139 ib. 57, &c.

as well acquainted with the private business set down for each sitting, as with the public notices and orders of the day.

What to  
be deemed  
private  
business.

The time at which matters relating to private bills are considered by the house has already been stated in the chapter describing the general transaction of business.<sup>1</sup> To entitle a motion to be heard at the time of private business, it must relate to a private bill before the house, or strictly to private business in some other form. Motions for the amendment of the standing orders relative to private business, and matters indirectly connected with the private business of the house, are also taken into consideration at the time of private business.<sup>2</sup>

Conduct  
of bills by  
members.

The forms and proceedings in the offices of the house, connected with the progress of a bill, are managed by the agent (or by a solicitor who has entered his name as agent) for the bill, and by the officers of the house: but, in the house itself, orders upon a private bill are obtained by a motion made by a member and a question proposed and put, in the usual manner, from the chair; and, except when opposed (see pp. 211, 646), motions relating to private bills are subject to the general rules of the house regarding motions (see p. 247).

Private  
bill Regis-  
ters.

S. O. 227.

Every vote of the house upon a private bill is entered in the votes and journals; and, in the Private Bill Office, Registers are also kept, which are open to public inspection daily, and in which all the proceedings, from the petition to the passing of the bill, are recorded. The entries in these Registers specify briefly each day's proceedings before the Examiners, or in the house, or in any committee to which the bill may be referred. As every proceeding is entered under the name of the particular bill to which it refers, it can be immediately referred to, and the exact state of the bill discovered at a glance.

Pro-  
ceedings  
on private  
bills.

After these explanations, the proceedings in the house may be described, without interruption, precisely in the order in which they usually occur.

<sup>1</sup> *Supra*, p. 210.

<sup>2</sup> 109 C. J. 396, &c.; and cf. *infra*, p. 642. On the 30th April, 1895, a proposed amendment to one of the standing orders relative to private business was not permitted to be moved at the time of private business, on the ground that it dealt simply with general questions relating to the conduct of railway companies, Mr. Speaker stating that amendments to these standing orders, if taken

at this time, must relate directly to the subject-matter of private bills and not to the general conduct of the companies who promote the bills, 33 Parl. Deb. 4 s. 116-118. Similarly, a proposed general instruction to all committees on Railway Bills has not been permitted to be moved at the time of private business, on the ground that the proposed motion raised a question of general policy (Mr. Speaker's private ruling, 26th March, 1895).

In those cases in which the Examiner has endorsed the petition <sup>1</sup> for a bill "standing orders complied with," the bill itself is presented by being laid on the table of the house,<sup>2</sup> not later than one clear day after such endorsement; or if, when so endorsed, the house should not be sitting, then not later than one clear day after the first subsequent sitting; and in case the house should not sit on the latest day allowed for laying the bill on the table, it is to be so laid on the first day on which the house shall again sit. Where the Examiner has reported that the standing orders have not been complied with, his report is referred to the Select Committee on Standing Orders; and when this committee have reported that the standing orders ought to be dispensed with, the bill is presented by being laid on the table of the house not later than one clear day after the house, acting on the report of the Standing Orders Committee, has given leave to the parties to proceed with the bill.

On the day previous to the day fixed for their being laid upon the table of the house, all private bills must be deposited in the Committee and Private Bill Office; and they are laid on the table of the house by one of the clerks of that office.

The Select Committee on Standing Orders <sup>3</sup> is a sessional committee, appointed by standing order No. 91 which provides that it shall consist of eleven members, who are to be nominated at the commencement of every session, of whom five shall be a quorum. In practice, the number of the committee is increased to thirteen members, under an order annually made by the house when the

<sup>1</sup> The petition for a private bill had formerly not only to be deposited in the Private Bill Office, but also to be presented to the house by a member within a specified time after its endorsement by the Examiner. If the standing orders had been complied with, the bill was at once ordered to be brought in, and it was presented, not later than one clear day after the presentation of the petition, by being deposited in the Private Bill Office. If the standing orders had not been complied with, both the petition for the bill and the Examiner's report were referred to the Standing Orders Committee; and, if that committee reported that the standing orders should be dispensed with, the bill itself was similarly ordered to be brought in, and

was similarly presented, not later than one clear day after the house (by agreeing to the committee's resolution) had given parties leave to proceed with the bill. The alterations of the standing orders regulating the presentation of private bills were made on the 30th July, 1903, 158 C. J. 369.

<sup>2</sup> Although the order "That leave be given to bring in" a private bill is not now made, the term *order of leave* is still familiarly used to denote the purposes—comprised within the notices and petition for the bill—for which any such bill provides.

<sup>3</sup> As to the Standing Orders Committee in the House of Lords, cf. *infra*, p. 744.

Private  
bill pre-  
sented.

S. O. 196.

Deposit  
of private  
bills.

S. O. 195.

Standing  
orders  
commit-  
tee.

S. O. 91.

committee is nominated.<sup>1</sup> And the quorum of the committee is as a rule reduced, late in a session, from five to three.<sup>2</sup>

Examiners' reports referred to them.  
S. O. 92.  
93. 199.

To this committee are referred all the reports of the examiners of petitions for private bills in which they report that the standing orders have not been complied with, whether the bills originate in the Lords or in the Commons. And the committee have to determine and to report to the house, in each case, whether such standing orders ought or ought not to be dispensed with, and whether, in their opinion, the parties should be permitted to proceed with their bill, or any portion of it, and under what (if any) conditions.

Special reports of examiners referred to them.  
S. O. 199.  
94.

All special reports made by the Examiner are also referred to the standing orders committee.<sup>3</sup> And in any case where the Examiner has made a special report "as to the construction of a standing order,"<sup>4</sup> the committee have to determine, according to their construction of the order, and on the facts stated in his report, whether the standing orders have or have not been complied with; and they then either report to the house that the standing orders have been complied with,<sup>5</sup> or, if not complied with, proceed to consider whether the standing orders ought to be dispensed with.

Proceedings of the standing orders committee.

According to the usual practice of this committee, written statements are prepared, on one side by the agent for the bill, and on the other by the agents for memorialists who have been heard by the Examiner.<sup>6</sup> When these statements have been read by the committee, they determine whether the standing orders ought or ought not to be dispensed with, and whether "the parties should be permitted to proceed with their bill, and under what (if any) conditions." The parties are called in and acquainted with the determination of the committee, which is afterwards reported to the house. It is not usual to hear the parties, except for the explanation

<sup>1</sup> 159 C. J. 26; &c. Since 1911 the number of the committee has not been increased.

<sup>2</sup> 149 C. J. 278; &c.

<sup>3</sup> In 1901 a special report made by the Examiner regarding a provisional order bill (originating in the Commons) which had been referred to him by that house after being reported from a committee, was referred to the standing orders committee, who reported that no standing orders not previously inquired into were applicable, 156 C. J. 302. 307. 318.

<sup>4</sup> Cf. *supra*, p. 624, and standing

order No. 78.

<sup>5</sup> Great Grimsby Street Tramways Bill, 155 C. J. 64. 95.

<sup>6</sup> In 1900, in the case of a hybrid bill with regard to which the examiners had reported a non-compliance, certain parties opposing the bill, who had not appeared before the Examiners, were allowed to appear before the standing orders committee, their petition against dispensing with the standing orders having been specially referred to the committee by the house, 155 C. J. 285. 297. 302. 320 (Military Manœuvres Bill).

of any circumstances which are not sufficiently shown by the written statements and in opposed cases, when the speeches of agents are limited to one on each side, although on one side there may be several parties interested.<sup>1</sup> But in some inquiries of a special character which have been referred to the committee, they have also examined witnesses<sup>2</sup> before they have agreed to their report.

The committee, in their report to the house, do not explain the grounds of their determination : but the principles and general rules by which they are guided may be briefly stated. The report of the Examiner being conclusive as to the facts, it is the province of the committee to consider equitably, with reference to public interests and private rights, whether the bill should be permitted to proceed. If the promoters appear to have attempted any fraud upon the house, or to be chargeable with gross or wilful negligence, they will have forfeited all claim to a favourable consideration. But assuming them to have taken reasonable care in endeavouring to comply with the orders of the house, and that their errors have been the result of accident or inadvertence, not amounting to *laches*, their case will be considered according to its particular circumstances. The committee will then estimate the importance of the orders which have been violated, the character and number of separate instances of non-compliance, the extent to which public and private interests may be affected by such non-compliance, the importance and pressing nature of the bill itself, the absence of opposition, or other special circumstances. And, according to the general view which they may take of the whole of the circumstances, the committee will report either that the standing orders ought not to be dispensed with ; or that they ought to be dispensed with and parties be permitted (subject, or not subject, to any conditions) to proceed with their bill.

If the standing orders committee report that the standing orders ought to be dispensed with, the house, by agreeing with the committee's resolution, gives the parties leave to proceed ; and where any conditions are specified in the committee's report, the necessary compliance with them is required to be proved, in ordinary cases,

Principles by which the standing orders committee are guided.

When standing orders dispensed with, and leave given to parties to proceed.

<sup>1</sup> As to the practice on this point of the standing orders committee in the Lords, see *infra*, p. 744.

<sup>2</sup> Edinburgh and Perth Railway Bill, 102 C. J. 226. 293 ; and evidence printed

at the expense of the parties ; Edinburgh and Northern Railway Bill, 104 ib. 37. 48. 70 ; Great Central Railway (Grimsby Fish Dock) Bill, re-committed resolution, 167 ib. 182.

before the committee on the bill,<sup>1</sup> or, in some special cases, before the Examiners.<sup>2</sup>

Standing orders not to be dispensed with.

If the standing orders committee report that the standing orders ought not to be dispensed with, their decision is generally acquiesced in by the promoters, and is fatal to the bill. But in order to leave the question still open for consideration, the house agrees to those resolutions only which are favourable to the progress of bills, and passes no opinion upon the unfavourable reports, which are merely ordered to lie upon the table.

Decision of standing orders committee objected to in the house.

Occasionally, exception has been taken to a decision of the standing orders committee, and the house has ordered that the case be referred back to them for consideration.<sup>3</sup>

<sup>1</sup> 109 C. J. 78; 159 ib. 38; &c.

<sup>2</sup> 104 C. J. 70 (as to deposit of amended notices); 104 ib. 81. 84 (of Estimate, &c.); 141 ib. 205 (of amended plans); &c. In the Bristol Tramways (Extensions) Bill, 1904, compliance with some of the prescribed conditions (connected with the preliminary standing orders applicable to tramways, &c.) was required to be proved before the Examiners, and compliance with others before the committee, 159 C. J. 99. 105.

<sup>3</sup> In certain cases (Manchester and Southampton Railway Bill, 1847, 102 C. J. 220. 228. 269; Belfast and West of Ireland Railway Bill, and Bagenalstown, &c. Railway Bill, 1854, 109 C. J. 67. 89. 120. 133; South London Railway (No. 2) Bill, 1860, 115 C. J. 69. 94; Hastings Western Water Bill, 1861, 116 C. J. 92. 139; Southam Railway Bill, 1863, 118 C. J. 68. 102), where the promoters of a bill, without desiring to disturb the decision of the standing orders committee, still entertained hopes that the house might be induced to relax the standing orders, or were willing to abandon portions of their bill—or where there were special circumstances, such as the consent of all parties or the urgent necessity of the bill being passed in the current session—an alternative course was taken. The promoters deposited a petition, praying for leave to deposit another petition for a bill, and stating fully the grounds of their application; upon which the standing orders committee reported to the house whether, in their opinion, the parties should have leave to

deposit a petition for a bill; and, unless such leave were refused (118 C. J. 68. 102), the petition for a bill was deposited in the Private Bill Office, and was examined and endorsed by the Examiner in the same manner as if it had been originally deposited at the prescribed time. But in such cases, the standing orders previously reported by the Examiner not to have been complied with, were taken to have been dispensed with; and unless any further breaches were discovered (102 C. J. 474), he reported that the standing orders had been complied with. In the case of the West Riding Union Railway, 1846, the committee had decided that the standing orders ought not to be dispensed with: but by a clerical error it was reported that the standing orders ought to be dispensed with, and a bill was ordered to be brought in. The report was referred back to the committee, and the subsequent proceedings declared null and void. The committee again decided that the standing orders ought not to be dispensed with, and so reported to the house: but the promoters subsequently presented a petition for leave to present a petition for a bill, and their second bill ultimately received the royal assent (101 C. J. 176. 232. 252). In the case of the Liverpool Tramways Bill of 1867, notice being taken that a report of the standing orders committee was incorrect, it was referred back to them (122 C. J. 66). In the case of the Filey Gas and Water Bill, 1898 (24th March), a resolution of the Standing Orders Committee was referred back on



In the case of the Albert Station and Mid-London Railway Bill of 1863, the resolution of the committee, in which they had refused to dispense with the standing orders, was thus recommitted, and a petition referred to the committee, with an instruction to inquire and report whether the special circumstances stated were such as to render it just and expedient that the standing orders should be dispensed with: but the committee after investigation, repeated their resolution that the orders ought not to be dispensed with.<sup>1</sup> And in 1883, in the case of the Dundalk Water Bill, the committee having reported that the standing orders ought not to be dispensed with, the report was recommitted; but the committee adhered to their previous decision.<sup>2</sup> In 1870, certain resolutions of the committee with the bills and the reports of the Examiners, were referred back to the committee, and petitions were referred to them, with an instruction to report whether special circumstances rendered it expedient that the standing orders should be dispensed with. The report was favourable, and the bills were permitted to proceed.<sup>3</sup>

In 1886, in the case of the Felixstowe, Ipswich, and Midlands Railway Bill, the standing orders committee having refused to dispense with the standing orders, their resolution was referred back to them; and the committee then reported that the standing orders should be dispensed with, subject to certain proofs being given before the Examiner, and that the committee on the bill should report how far this condition had been complied with.<sup>4</sup>

In 1911 in the case of a petition for additional provision in the Macclesfield and District Railless Traction and Electricity Supply Bill [Lords] the committee reported that the standing orders ought not to be dispensed with. The resolution was referred back to the Committee who were given power to inquire whether there were any special circumstances which rendered it just and expedient that the standing orders should be dispensed with in respect of the petition. The committee reported that the standing orders ought to be dispensed with provided that an advertisement in terms prescribed by the committee was published in a local newspaper.<sup>5</sup>

the motion of the chairman of the committee, some misconception having arisen as to its meaning (55 Parl. Deb. 4 s. 726-7).

<sup>1</sup> 118 C. J. 145. 165.

<sup>2</sup> 138 C. J. 87. 121. 129.

<sup>3</sup> 125 C. J. 78. 106. 114. And cf. also

117 ib. 307. 311 (Great Northern and Western, &c., Railway Bill); and 145 ib. 255. 267 (Richardson and Co. (War-rants) Bill).

<sup>4</sup> 141 C. J. 196. 205. Cf. also 142 ib. 234. 244. 255.

<sup>5</sup> 166 C. J. 225. 241. 252.

In 1912 the Examiner's report that the standing orders had not been complied with in the case of the petition for the Great Central Railway (Grimsby Fish Dock) Bill [Lords] was referred to the standing orders committee who reported that the standing orders ought not to be dispensed with. Their report was referred back to them and they were given the same powers as in the previous case. The committee made a special report to the house that they had satisfied themselves from evidence given that the work proposed in the bill was a matter of urgent public importance. They accordingly recommended that compliance with the standing orders should be dispensed with but did not desire their decision to be regarded as a precedent.<sup>1</sup>

Other  
duties of  
standing  
orders  
rules  
com-  
mittee.  
S. O. 200.  
95. 96.

The proceedings of the standing orders committee in regard to reports from the Examiners will be again referred to, incidentally, when dealing with bills referred to the Examiners after introduction,<sup>2</sup> and with petitions for additional provision.<sup>3</sup> Besides the Examiner's reports, however, there also stand referred to this committee all petitions which have been deposited in the Committee and Private Bill Office, praying that any of the sessional or standing orders of the house may be dispensed with—or that petitions for private bills, which have been struck off the General List by the Examiners, may be reinserted<sup>4</sup>—and all petitions opposing the same; and the committee report their opinion upon such petitions to the house. Other matters, also, are sometimes referred to the standing orders committee;<sup>5</sup> and their duties in reference to clauses and amendments which may be referred to them, in accordance with standing order No. 216, will be noticed later (p. 738).

Departure  
from the  
ordinary  
rules  
governing  
the intro-  
duction of  
private  
bills.

There are some cases in which a departure is made from the rules that govern the introduction of private bills. By standing order No. 193, as already stated,<sup>6</sup> no private bill is to be brought into the house otherwise than upon a petition duly deposited in accordance

<sup>1</sup> 167 C. J. 85. 134. 155. 162. For a case in which the house referred back to the committee a resolution refusing to dispense with standing order 128 in the case of a petitioner against a bill, see 160 C. J. 61. 117. 128; and *infra*. p. 672. For cases in which motions to refer back resolutions have been negatived, see 140 ib. 296; 160 ib. 177.

<sup>2</sup> *Infra*, p. 644.

<sup>3</sup> *Infra*, p. 642.

<sup>4</sup> Cf. *supra*, p. 618.

<sup>5</sup> In the case of the Blackrock, &c., Tramways Bill, 1882, petitions presented by certain parties (praying that the bill might be referred to the Examiner to inquire as to the legality of the sealed bill produced before him in, the proof of compliance with standing orders) were referred to the standing orders committee who reported thereon to the house, 137 C. J. 81. 95. Cf. also *infra*, p. 707.

<sup>6</sup> *Supra*, p. 614.

with the provisions of that standing order and of standing order No. 32; and the manner (as just described) in which all private bills are to be presented is laid down by standing orders Nos. 195 and 196. But in the case of certain bills promoted by the London County Council, the petition for the bill is permitted under standing order No. 194B to be deposited, and the bill itself presented, at later dates than those prescribed in the case of private bills generally. "Hybrid" bills, which have already been described,<sup>1</sup> and provisional order bills, which will be dealt with later (Chapter XXXI.), are not required to be brought in, like private bills, upon petition. And there have been instances of such urgent necessity for legislation, that a private bill has been brought in on motion: in such cases, the standing orders have been suspended by order of the house, and leave given to bring in the bill.<sup>2</sup>

L. C. C.  
bills.  
S. O. 194B.

Hybrid  
and pro-  
visional  
order bills.

Urgent  
private  
bills.

If parties desire to solicit a private bill during the current session, who have not deposited a petition for the bill before the 17th December, they may deposit a petition, praying for leave to deposit a petition for a bill, and explaining the circumstances under which they had been prevented from complying with the orders of the house as to the deposit of the petition for the bill at the proper time. This petition (for leave to deposit a petition) will stand referred to the standing orders committee, and if the parties succeed in making out a case for indulgence, leave will be given to them by the house, on the report of the committee, to deposit a petition for a bill, which will be proceeded with in the usual manner.<sup>3</sup>

Petitions  
for bills,  
and bills  
deposited  
after time.

<sup>1</sup> *Supra*, pp. 354, 596.

<sup>2</sup> East London Railway (Payment of Debts) Bill, 133 C. J. 320; Metropolitan Board of Works (District Railway) Bill, 138 ib. 242; Manchester Ship Canal Bill, 142 ib. 276; Hull, Barnsley, &c., Railway Bill (to raise further money by debentures), 144 ib. 295; Lancashire Union Railway (Mines) Bill, 149 ib. 218.

<sup>3</sup> 160 C. J. 49. 78. 94 (Malvern Water) and 160 ib. 93. 122. 128 (Worcestershire County Council, &c.). For earlier cases, previous to 1903, cf. 109 C. J. 340; 112 ib. 295; 115 ib. 244; 117 ib. 293; 150 ib. 47. In some cases—occurring before the repeal, in 1903, of the standing order under which the petitions for private bills were presented to the house and the bills themselves formally ordered to be brought in (*supra*, p. 633, note 1)—promoters obtained leave from the house to withdraw

their original petition for a bill and to present petitions for several separate bills with reference to the objects comprised in their original petition (South Eastern Railways, 100 C. J. 43. 104. 115. 136; London and Croydon Railway (Kentish Lines) and London and Croydon Railway Enlargement, 100 C. J. 108. 130. 138). And on the 16th February, 1892, the order, previously made, for leave to bring in the London and North Western Railway (New Railways) Bill was discharged, and leave was given to bring in two bills in lieu thereof (147 C. J. 46). Now, however, no order is made in the house if parties, after having deposited a petition for a bill, desire not to proceed further. In 1905, in the Thames Harbour case, the promoters, having deposited their petition, did not proceed further and deposit their bill for presentation at the

Printing  
of private  
bills.

S. O. 201.  
202. 203.

Every private bill presented to the house must be printed on paper of a folio size (as determined by the Speaker), with a cover of parchment attached to it, upon which the title is written; the short title of the bill, as first entered in the votes, must correspond with that at the head of the advertisement; and standing order No. 202 provides that "all charges in any way affecting the public revenue, which occur in the clauses of any private bill, shall be printed in *italics*."<sup>1</sup> With the exception of Name bills all private bills must be printed, and printed copies must be delivered to the Vote Office for the use of members before the first reading.<sup>2</sup>

First  
reading.

S. O. 197.

When "laid on the table of the house" a private bill is deemed to have been read the first time (and is recorded in the votes as having been so read); and, on the day on which it is so laid, it is ordered to be read a second time.

Bills that  
are re-  
ferred to  
the Ex-  
aminers  
after first  
reading.

S. O. 72.  
194B. 232.

All bills brought from the House of Lords are read the first time when received from that house, and, unless they are name or divorce bills,<sup>3</sup> are referred to the Examiners, before whom compliance with such standing orders only as have not been previously inquired into has to be proved. Under standing order No. 194B, certain bills introduced by the London County Council have to be referred after first reading to the Examiners in the manner, and for proof of compliance with the requirements, specified in that order.

Bills re-  
ferred to  
the Ex-  
aminers  
under the  
"Wharn-  
cliffe"  
orders.  
S. O. 62-  
66;

Under what are known as the "Wharncliffe" standing orders, Nos. 62 to 66, certain bills, conferring particular powers upon companies constituted by Act of Parliament or otherwise, have to be referred to the Examiners for proof that, as brought into the house—or as amended (or proposed to be amended) on a petition for additional provision, or as brought from the House of Lords—they have been duly approved of by the proprietors or members of the companies concerned, in the manner prescribed in the orders.<sup>4</sup> Under

prescribed time; and in the Coventry Electric Tramways case (in which the Examiners of Petitions for private bills had reported a non-compliance) the promoters similarly proceeded no further, informing the standing orders committee accordingly (160 C. J. 38).

<sup>1</sup> Cf. also *supra*, p. 458.

<sup>2</sup> On the 20th February, 1846, the solicitor and agent for a bill petitioned for leave to add schedules which had been accidentally omitted from the printed copies of the bill, and the house allowed

the parties to make the alteration, 101 C. J. 183. 185 (Southport Improvement Bill).

<sup>3</sup> As to these bills (and as to Naturalization and Restitution bills which, similarly, have not been referred to the Examiners in the Commons), see p. 742 and Chapter XXX.

<sup>4</sup> As to the right of proprietors, &c., dissenting under standing orders Nos. 62-66, to be heard before the Examiners, cf. standing order 75, and *supra*, p. 620.

standing order No. 67, in the case of certain railway bills, by which <sup>and under S. O. 67.</sup> a charge is imposed on a local rate in Ireland, and under standing order No. 68, in the case of certain bills for the purpose of establishing companies, similar proof is required of the approval, in the former case, of the County Council or other rating authority, and, in the latter, of the directors, &c., named in the bill. The particular provisions, however, of these two standing orders and of the five "Wharnccliffe" orders (Nos. 62-66), are practically identical in both houses, and will be more conveniently detailed later in connection with the proceedings in the Lords upon private bills (Chapter XXIX.). Here it is only necessary to note the stage at which the bills under these standing orders are referred in the Commons to the Examiners. Those under standing orders Nos. 62, 63, and 67, being bills originating in the Commons, are referred after the bill has been read a second time; <sup>S. O. 68.</sup> <sup>1</sup> those under standing orders Nos. 64, 65, and 68, being Lords' bills, are referred on being brought from that house; whilst in the case of bills under standing order 66, being bills originating in the Commons, if the bill as introduced contains the provisions for which consents are requisite under the order, the necessary proof before the Examiners has to be taken within five weeks of the date on which the petition for the bill was endorsed by the Examiner.

Under standing order No. 61 (which is identical in both houses), <sup>Bills referred to the Examiners under S. O. 61.</sup> whenever any alteration has been made in any work authorized by "any bill of the second class," during its progress through the house in which it originates, proof has to be given before the Examiner, when the bill reaches the second house, of compliance with certain conditions which are specified in detail in the order. These conditions correspond to those with which compliance has to be proved under the preliminary standing orders already mentioned, prior to the introduction of bills of the second class; but they comprise in addition certain stringent requirements (specifically prescribed by this order) relating to the interests of owners, occupiers, and lessees affected by the alteration.<sup>2</sup> Compliance with this order is not necessary in the case of alterations made upon a petition for additional provision in the first house.

<sup>1</sup> Before 1912 bills in the case of which compliance with further standing orders had to be proved were referred to the Examiners for that purpose after being read the first time. For amendments

of the standing orders effecting this change of practice, see 167 C. J. 291. 354.

<sup>2</sup> Cf. committee on South Eastern Railway Bill, 1889.

Petitions  
for addi-  
tional pro-  
vision.

S. O. 198.

S. O. 72.  
73. 232.

If, after the introduction of a private bill, any additional provision should be desired to be made in the bill,<sup>1</sup> in respect of matters to which the standing orders are applicable, a petition for that purpose should be presented to the house, with a printed copy of the proposed clauses annexed. The petition will be referred to the Examiners of petitions for private bills, who are to give at least two clear days' notice of the day on which it will be examined. Memorials complaining of non-compliance with the standing orders, in respect of the petition, may be deposited in the Committee and Private Bill Office, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination of the petition; and the Examiner may entertain any memorial, although the party (if any) who may be specially affected by the non-compliance shall not have signed it. After hearing the parties, in the same manner as in the case of an original petition for a bill, the Examiner reports to the house whether the standing orders have been complied with or not, or whether any be applicable to the petition for additional provision; and if the standing orders committee report that those standing orders with which the Examiner reports a non-compliance should be dispensed with, the promoters have leave, upon the resolution of that committee being agreed to by the house, to introduce their additional provision if the committee on the bill think fit.<sup>2</sup>

Provisions  
in private  
bills, or  
petitions  
for addi-  
tional pro-  
vision,  
imposing  
charges

It has already been explained (see p. 458) that any clauses and provisions, incidentally contained in a public bill, which create a charge on the consolidated fund or on the public revenues or the revenues of India, or which impose a tax on the people, have to be sanctioned by a resolution of a committee of the whole house, the recommendation of the Crown being signified and the resolution being

<sup>1</sup> In cases where provisions are sought to be inserted, upon petition for additional provision, which were comprised in the original notices but were not contained in the bill as introduced into Parliament, the original notices are not held to apply to the additional provisions proposed to be inserted, standing order 72.

<sup>2</sup> 159 C. J. 79. 85. &c In 1853, the standing orders committee had reported that the parties should have leave to make provision in the Lands Improvement Bill, pursuant to their petition. In the mean time the amendments proposed to be made in other parts of the bill had become so numerous, that the

chairman of ways and means required the promoters to withdraw it, and bring in another. On bill No. 2 being ordered, the resolution of the house on the report of the standing orders committee was read, and the members, by whom (in accordance with the then-existing practice) the bill was ordered to be brought in, were instructed to make provision pursuant to the petition. A second reference to the standing orders committee was thus avoided, 108 C. J. 406. The standing orders committee of the house in which the bill does not originate consider the examiner's report at once, see p. 617, n. 1.

agreed to by the house. Before the committee on the bill can consider the matter, similar proceedings are necessary with regard to any such provision when contained (or proposed, upon a petition for additional provision,<sup>1</sup> to be inserted) in a private bill. The house resolves to go into committee on a future day, to consider the proposed provision, the King's recommendation being signified, and the matter is considered in the committee of the whole house on that day; and when the resolution is reported and is agreed to by the house, an instruction is given to the committee on the bill to make provision accordingly.<sup>2</sup> These proceedings, in the case of a private bill, are taken at the time of private business.

In the Birkenhead Docks Bill, 1850, an arrangement having been made with the commissioners of woods and forests for a payment out of the land revenues of the Crown, a resolution was agreed to, in the proper form, and the bill recommitted to a committee of the whole house, with an instruction to make provision.<sup>3</sup> In the case of the Forest of Dean Central Railway Bill, 1856, after the bill had been reported from the committee, a resolution was agreed to for an advance to the company out of the land revenues of the Crown; the bill was recommitted to a committee of the whole house, and an instruction given to make provision accordingly.<sup>4</sup> In 1856 a petition, presented to the house, for leave to bring in a bill relating to a claim upon the Crown, was referred—the Queen's recommendation having been signified—to a committee of the whole house.<sup>5</sup>

In the case of any private bill by which it is intended to authorize, confirm or alter any contract with a Government department,

Bills relating to Government contracts. S. O. 81.

<sup>1</sup> National Loan Fund Life Assurance Society (stamp duty on memorials), 110 C. J. 217. 221. 225. 229; Law Life Assurance Society (stamp duty on memorials), 118 C. J. 312. 316. 327. 330; Land Securities Company (stamp duty on mortgage debentures), 119 C. J. 116. 122. 126. 127.

<sup>2</sup> Dundalk and Greenore Railway (cancellation of bond), 128 C. J. 209. 215. 221; Rhondda Valley and Hirwain Junction Railway (cancellation of bond), 133 C. J. 121. 133. 136. 146; Universal Life Assurance Society (stamp duties), 155 C. J. 122. 124. 127. 140; Great Indian Peninsula Railway Company (annuities), 155 C. J. 238. 242. 248. 255. 300; Liverpool and London and Globe Insurance Company (stamp duties), 159 C. J. 156. 160.

163. 183; Norwich Union Life Insurance Society (stamp duties), 160 ib. 66; Madras Railway Company (Purchase) Annuities, 163 ib. 59.

<sup>3</sup> 105 C. J. 369. 423.

<sup>4</sup> 111 C. J. 266. In 1882, the East London Railway Bill, after having been considered as amended, was similarly recommitted to a committee of the whole house, with an instruction to make provision pursuant to the resolution that had been reported from the committee on the East London Railway (repayment of deposits) and agreed to by the house, 137 C. J. 242. 254.

<sup>5</sup> Earl of Perth and Melfort's Compensation Bill, 1856, 111 C. J. 241. 247. 254. 256. 311.

whereby a public charge has been or may be created, the chairman of ways and means is to make a report to the house previously to the second reading; and his report, with a copy of the contract and of any resolution to be proposed thereon, is to be circulated with the votes two clear days before the consideration of the resolution in a committee of the whole house, which is not to take place till after the time of private business; nor is the report of the resolution to be considered till three clear days after the resolution has been agreed to.<sup>1</sup>

Proceedings before second reading of a private bill. *S. O.* 204. Between the first and second readings of a private bill there may not be less than three clear days, nor more than seven, except in the case of a private bill which has been brought from the Lords and has been referred to the Examiners; in which case it may not be read a second time later than seven clear days after the report of the Examiner, or of the standing orders committee.<sup>2</sup> The agent for the bill is required to give three clear days' notice in writing, at the Committee and Private Bill Office, of the day proposed for the second reading, and no such notice may be given until the day after that on which the bill has been ordered to be read a second time. If it should be afterwards discovered that such notice had not been duly given, the proceedings upon the second reading will be declared null and void.<sup>3</sup>

Bill examined in Private Bill Office. *S. O.* 233. 234. Meanwhile the bill is in the custody of the Committee and Private Bill Office, where it is examined as to its conformity with the rules and standing orders of the house. The House of Commons will not allow peers to be concerned in the levy of any charge upon the people: but the relaxation of its privileges already alluded to<sup>4</sup> (in regard to clauses referring to tolls and charges for services performed, not being in the nature of a tax) has led to a considerable change in recent practice. By Mr. Speaker's order<sup>5</sup>

"The clerks in the Private Bill Office are particularly directed to take care that in the examination of all private bills levying any rates, tolls, or duties on the subject, peers of Parliament, peers of Scotland, or peers of Ireland, are not

<sup>1</sup> With regard to packet and telegraphic contracts, see p. 506, and standing orders No. 72-74 (Public Business).

<sup>2</sup> When the time allowed for the second reading expires during an adjournment of the house, other than an adjournment from Friday to the following Monday, the time is extended to the second day

upon which the house sits after the adjournment, standing order 224A.

<sup>3</sup> North Union Railway Bill, 101 C. J. 371.

<sup>4</sup> *Supra*, p. 627, and standing order 226.

<sup>5</sup> 15th Feb. 1859.



to be inserted therein, either as trustees, commissioners, or directors of any company, except where such rates, tolls, or duties are made or imposed for services performed, and are not in the nature of a tax."

If the bill be improperly drawn, the order for the second reading is discharged,<sup>1</sup> and the bill is withdrawn. If, when a bill is withdrawn, leave is given to present another,<sup>2</sup> the bill so presented is distinguished from the first bill by being numbered (2), and, having been read the first time, is referred to the Examiners of petitions for private bills. Two clear days' notice is given of the examination, and memorials may be deposited before twelve o'clock on the day preceding that appointed. The Examiner inquires whether the standing orders, which have been already proved in respect of the first bill, have equally been complied with in respect of the bill No. 2, and reports accordingly to the house; when the bill proceeds in the ordinary course.

Bills with-  
drawn  
and bills  
intro-  
duced in  
lieu of  
bills with-  
drawn.  
S. O. 72,  
73.

The second reading of a private bill corresponds with the same stage in other bills, and in agreeing to it the house affirms the general principle, or expediency, of the measure. There is, however, a distinction between the second reading of a public and of a private bill, which should not be overlooked. A public bill being founded on reasons of state policy, the house, in agreeing to its second reading, accepts and affirms those reasons: but the expediency of a private bill, being mainly founded upon allegations of fact, which have not yet been proved, the house, in agreeing to its second reading, affirms the principle of the bill, conditionally, and subject to the proof of such allegations before the committee. Where, irrespective of such facts, the principle is objectionable, the house will not consent to the second reading: but otherwise, the expediency of the measure is usually left for the consideration of the committee.<sup>3</sup> This is the

Second  
reading of  
a private  
bill.

<sup>1</sup> In 1845, Mr. Speaker called the attention of the house to a bill (Midland Railway, &c. Bill), which contained a clause, giving compulsory power to take lands, of which no notice had been given, and without the proper plans, sections, and estimates having been deposited according to the standing orders. The order for the second reading was discharged, and the bill referred to the committee on petitions for private bills (the predecessors of the Examiners). This committee found that the standing orders had not been complied with: and they were thereupon instructed to

inquire by whom, and under what circumstances, the violation of the standing orders had been committed. Their report upon this point was referred to the standing orders committee, who determined that the standing orders ought not to be dispensed with; and the bill was not proceeded with, 100 C. J. 169. 219. 247. 262. 385. 419.

<sup>2</sup> 92 C. J. 254. 425. 432; 99 ib. 187. 211; 104 ib. 71. 118. 320; 105 ib. 40. 106 ib. 209; 108 ib. 289; 136 ib. 166.

<sup>3</sup> But see Minutes of Committee on Mersey Conservancy Bill, 1857; and 147 H. D. 3 s. 133.

first occasion on which the bill is brought before the house otherwise than *pro forma*, or in connection with the standing orders; and if the bill be opposed, upon its principle, it is the proper time for attempting its defeat.<sup>1</sup> If the second reading be deferred for three or six months, or if the bill be rejected, no new bill for the same object can be offered until the next session (see p. 273).

Second reading, and other stages, &c., of private bill postponed if opposed.

S. O. 207.

Stages taken by mistake.

If the second or third reading of a bill, or the consideration of a bill as amended, or any proposed clause or amendment, or any motion relating to a bill be opposed, its consideration is postponed in the manner already described (p. 211).

When a bill has been read a second time by mistake, the order then made "That the bill be now read a second time" has been discharged on a later day, and another day appointed for the second reading,<sup>2</sup> or the bill has been referred back to the Examiner.<sup>3</sup> In similar circumstances the proceedings on consideration of a bill have been declared null and void, and another day has been appointed for its consideration.<sup>4</sup>

<sup>1</sup> On the 26th April, 1904, on the second reading of the Liverpool and London Insurance Company Bill, Mr. Speaker ruled that a member could not move an amendment that would raise the general policy and the state of the general law as to alterations of the articles of association of insurance companies, but that he might have an opportunity of arguing against the bill on those lines. 133 Parl. Deb. 4 s. 1259. And for examples of matters which members, in opposing the second reading, have been debarred from raising as reasons for rejecting a private bill, cf. the Speaker's rulings:

(1) On the Great Northern Railway (Ireland) Bill, 1891 (21st April), and the Great Western Railway Bill, 1903 (21st April): that it was unsuitable, and exceeding the usual limits, to advance such details as the alleged cheeseparer policy and discreditable train service of the promoting company, or the conditions of contracts for carrying milk, &c., as reasons for rejecting the bill, 352 H. D. 3 s. 1021-4; 121 Parl. Deb. 4 s. 73;

(2) On the Great Northern Railway (Ireland) Bill, 1891, and Great Southern and Western Railway Bill, 1901 (27th June): that it was inadmissible, or not a relevant ground for moving the rejection

of the bill, to go into the alleged misuse by the company of their powers in the past, 352 H. D. 3 s. 1021-4; 96 Parl. Deb. 4 s. 43;

(3) On the London and North Western Railway Bill, 1896 (14th April): that it was inadmissible to go into the general conduct of a railway company, or to raise a general discussion on the passenger traffic and charges over their whole line, upon the second reading of a bill affecting the exceptional rates which they charged on one particular section, 39 Parl. Deb. 4 s. 857-62;

(4) On the Fishguard and Rosslare Railways and Harbours Bill: that it was inadmissible to discuss on the second reading of the bill the action of a company which was only a subscriber to the undertaking authorised by the bill, 51 H. C. Deb. 5 s. 1458;

(5) On the Lancashire and Yorkshire Railway Bill: that regulations put into force by the company in common with other companies could not be discussed on the bill, but should be dealt with by a general bill, 52 H. C. Deb. 5 s. 654.

<sup>2</sup> 127 C. J. 135; 130 ib. 72; 139 ib. 57.

<sup>3</sup> 133 C. J. 61.

<sup>4</sup> 167 C. J. 186.

After a private bill has been read a second time, an instruction may be given by the house, if it think fit, for the direction of the committee on the bill.<sup>1</sup> And in cases where a bill, after having been reported, has been recommitted,<sup>2</sup> an instruction may be similarly given to the committee on the recommitted bill.

Instructions to committees on private bills are either mandatory or permissive. Mandatory instructions leave the committee no option in the exercise of their functions with regard to the particular matter that is the subject of the instruction, and for that reason they are often deprecated;<sup>3</sup> but such instructions have frequently been proposed, and have in numerous cases been given to committees on private bills. For example, on the 15th April, 1872, an instruction was moved to the committee on the Metage of Grain (Port of London) Bill, to provide for the abolition of compulsory metage, and of any tax or charge upon grain imported into London. Exception was taken to an instruction which imposed an absolute condition upon the decision of the committee. The Speaker, however, stated that such an instruction was unusual, but was quite within the competence of the house; and the motion for the instruction was agreed to.<sup>4</sup> In 1897 a mandatory instruction was offered to be moved, on the Dublin Corporation Bill, directing the committee to insert provisions prescribing a specified manner for the decision of any disputes as to the price for water to be supplied by the corporation to the townships mentioned in the bill; but Mr. Speaker stated that, although the proposed instruction was in order, it was contrary to all sound

<sup>1</sup> If the bill is referred to the examiners after its second reading an instruction is not moved "to the committee on the bill" but "to the committee to which the bill may be committed," 169 C. J. 93, as the bill cannot be committed until compliance with the further standing orders has been proved or dispensed with, as the case may be (see p. 660). An instruction may be moved as a contingent motion as provided by standing order 207 immediately after an opposed bill set down for consideration at a quarter-past eight o'clock has been read a second time (see p. 212).

<sup>2</sup> As to private bills recommitted, see *infra*, p. 735.

<sup>3</sup> 25 Parl. Deb. 4 s. 1067-8; 80 ib. 182, 195, &c. And cf. further—as to mandatory instructions to private bill

committees—the Report and Minutes of Evidence of the Select Committee on Private Business, Parl. Pap. (H. C.) sess. 1902, No. 378, pp. v. and vii. and Qns. 42-46. 1137. On the 15th March, 1901, an instruction of which notice had been given, on the Great Eastern Railway Bill, was ruled out of order by Mr. Speaker, who said that it proposed to give a mandatory direction to the committee to set aside the form of clause prescribed by standing order with regard to houses of the working classes, and that such a course would be an abuse of the use of instructions, 91 Parl. Deb. 4 s. 54-55. And cf. ruling on a proposed mandatory instruction on the London Streets and Buildings Bill, 26 Parl. Deb. 4 s. 116.

<sup>4</sup> 210 H. D. 3 s. 1260-62.

practice of the house in regard to private bills, and the motion was not made.<sup>1</sup> In 1909 the Speaker ruled an instruction out of order on the ground that it dictated to a committee the express terms of a clause to be inserted in the bill before the committee had had an opportunity of considering the bill.<sup>2</sup>

In 1896 an instruction was given, to the committee on the London County Council (Vauxhall Bridge Tramways) Bill, to take the evidence of the police upon the question of traffic.<sup>3</sup> In 1902, the committee by whom the London United Electric Railways Bill and the Piccadilly, City and North-East Railway Bill were considered, were instructed to take security, in each case, from the undertakers for the completion of the whole scheme of railways comprised in each bill;<sup>4</sup> but in the former case the parties did not proceed with their bill;<sup>5</sup> and, in the case of the latter bill, the committee made a special report stating that the conditions imposed by the instruction of the house could consequently not be complied with, and that the preamble could not therefore be proved.<sup>6</sup> In 1893, the committee on the Weaver Navigation Bill were instructed to insert a clause requiring the trustees to come to Parliament within two years with such a bill as would enable parliament to deal with the whole question of the trust.<sup>7</sup> In 1888 an instruction was given to the committee on the Brixton Park Bill, that they do provide that the purchase of the park be not made till the opinion of the ratepayers of Lambeth had been taken on the desirability of the purchase;<sup>8</sup> in 1890, to the committee on the Warrington Extension Bill, that no provisions be assented to which would result in the borough being situated in more than one administrative county;<sup>9</sup> and in 1894, to the committee on the Thames Conservancy Bill, that no further powers, than those already legally exercised, be given to the water companies to take

<sup>1</sup> 46 Parl. Deb. 4 s. 613. 623-5.

<sup>2</sup> 4 H. C. Deb. 5 s. 1300. See also notices of instructions to the committees on eight water bills and to the committee on the Great Northern, Great Central, and Great Eastern Railways Bill directing the committees on the bills to insert therein the clauses set out in the instructions, *Private Business*, sess. 1909, pp. 138. 228. These notices were removed from the paper in accordance with private rulings of the Speaker and an instruction in general terms was moved to the committees on the water bills, 164 C. J. 67.

<sup>3</sup> 151 C. J. 68. And cf. in the same session, the instruction regarding the taking of certain evidence on the London and North Western Railway Bill, 151 ib. 184.

<sup>4</sup> 157 C. J. 361.

<sup>5</sup> 157 C. J. 443.

<sup>6</sup> 157 C. J. 447, 113 Parl. Deb. 4 s. 1142, *et seq.*

<sup>7</sup> 148 C. J. 339.

<sup>8</sup> 143 C. J. 105. A motion for a similar instruction on the Vauxhall Park Bill was negatived, ib. 166.

<sup>9</sup> 145 C. J. 76.

water from the Thames.<sup>1</sup> In 1908 various bills relating to the companies supplying electricity to the metropolis were referred to the same committee and instructions were given to the committee directing them in the case of certain companies to make the London County Council the purchasing authority and in the case of the other companies to insert a provision to prevent such companies opposing future legislation introduced for that purpose. They were also given powers of dealing in a similar way with the extension to local authorities which supply electrical energy of the powers of mutual assistance and association conferred on the promoters by the bills, and persons affected by the proposals contained in the instructions were entitled to be heard before the committee.<sup>2</sup>

In 1910 and 1912 the committees on various provisional order bills dealing with the extension of the boundaries of boroughs were directed to insert a clause providing that the financial adjustments rendered necessary by the extension should conform to the decision of a joint committee which was dealing with the general subject,<sup>3</sup> while in other cases the committee has been directed to consider particularly the effect of the proposed extension of boundaries upon the capacity of the county council to carry on its duties in the residue of the county area.<sup>4</sup>

In 1911 the committee on the Corporation of London (Bridges) recommitted Bill were instructed not to agree to any scheme for the construction of a proposed bridge until they were satisfied as to its architectural design and practical convenience.<sup>5</sup> In 1902 the committee on the Leamington Corporation Bill were instructed that if they allowed certain clauses they were to report to the house their reasons for doing so.<sup>6</sup> In various cases instructions have been given to committees on private bills directing them to insert certain clauses or words or to provide for certain specified objects,<sup>7</sup> or to take standing order No. 184A (see p. 710) into their consideration as if the bill authorized the construction of works,<sup>8</sup> and instructions have

<sup>1</sup> 149 C. J. 56.

<sup>2</sup> 163 C. J. 408. 425.

<sup>3</sup> 165 C. J. 215. 216. 231; 167 ib. 218.

219. 238.

<sup>4</sup> 168 C. J. 229.

<sup>5</sup> 166 C. J. 277.

<sup>6</sup> 157 C. J. 69. 222.

<sup>7</sup> *E.g.*, Provisions with regard to Superannuation and Provident Funds, 155 C. J. 284; 156 ib. 76. 90. 257. 278; 157 ib. 82; 159 ib. 250; Workmen's

Trains and Fares, 157 ib. 324. 360; Acquisition of Open Spaces, 154 ib. 102. To the Committee on Maidenhead Bridge Bill to insert clause providing for the payment by promoters to Joseph Taylor of certain costs, 159 C. J. 257, 136 Parl. Deb. 4 s. 92. 1060. See also 157 C. J. 111; 160 ib. 63. 68. 69. 98; 161 ib. 304; 163 ib. 348; 168 ib. 132. 143.

<sup>8</sup> 167 C. J. 40.

frequently been given to committees directing them to omit certain clauses<sup>1</sup> or other specified portions<sup>2</sup> of a bill.

Occasionally the committee on a private bill are directed, by a mandatory instruction, to consider or inquire whether it is desirable to insert provisions, or to alter existing provisions, upon particular points;<sup>3</sup> and other instructions, also mandatory, direct committees to inquire into and report upon matters which, in the opinion of the house, are relevant to the bill. For instance, instructions were given, in 1866, to the committee on the London (City) Corporation Gas Bill, to inquire into the Metropolis Gas Act, 1860, and to the committee on the London (City) Traffic Regulation Bill, to inquire into the best means of regulating the traffic of the metropolis.<sup>4</sup> In 1867 the committee on the East London Water (Thames Supply) Bill were instructed to inquire into the Metropolis Water Act, 1852.<sup>5</sup>

In 1898 and in 1899 instructions were given to the committees on certain Irish Railway Bills directing them to inquire and report whether the proposals of the bills would prevent or prejudice adequate competition.<sup>6</sup>

In 1884 an instruction was moved to direct the committee on the Dublin, Wicklow, and Wexford Railway Bill to inquire and report whether the proposed railway would injuriously affect an open space in Dublin, and on its being objected that the committee already possessed the power to be conferred by the instruction, the Speaker said that the instruction, being mandatory, was perfectly in order.<sup>7</sup> In other cases, the committee on a private bill have been instructed

<sup>1</sup> 145 C. J. 194; 146 ib. 94; 160 ib. 54, 60, 68-69; 161 ib. 186.

<sup>2</sup> 157 C. J. 86, 112; 158 ib. 62, 81, 99; 159 ib. 107; 160 ib. 148; 162 ib. 341; 165 ib. 81; 166 ib. 38, 102; 167 ib. 115; 168 ib. 144; to strike out certain powers, 152 ib. 324; to strike out clauses relative to milk supply other than model clauses, 163 ib. 80.

<sup>3</sup> 155 C. J. 73, 80, 91, 106, 119; &c. (as to provisions for cheap fares, Tramways Bills); 153 ib. 136; 155 ib. 80, 87, 178. In 1896 the committee on the City and South London Railway Bill were instructed to consider whether, and what, provisions could reasonably be made for the preservation of the church of St. Mary Woolnoth without preventing the construction of the railway, &c., 151 C. J. 169.

<sup>4</sup> 121 C. J. 106, 136.

<sup>5</sup> 122 C. J. 65.

<sup>6</sup> Fishguard and Rosslare Railways and Harbours Bill, 1898 (for the acquisition of the undertakings of other railway companies, &c.), 153 C. J. 173. Great Southern and Western and Western and Waterford, &c., Railway Companies Amalgamation Bill, 1899, and Great Southern and Western Railway Bill, 1899 (also for amalgamation), 154 C. J. 89. These bills were committed to specially constituted committees.

<sup>7</sup> 139 C. J. 190, 287 H. D. 3 s. 875. In 1902 the committee on the Charing Cross, Euston, and Hampstead Railway, &c., Bill, were instructed to inquire and report whether the railway would not seriously injure Hampstead Heath, 157 C. J. 366.

to take into their consideration the desirability of making provision for preserving or securing an open space.<sup>1</sup>

In 1884 an instruction was given to the committee on the Ennerdale Railway Bill, to inquire and report whether the proposed railway would interfere with the enjoyment of the public, and of visitors to the lake district, by injuriously affecting the scenery; <sup>2</sup> and similar instructions were given, in 1887, to the committee on the Ambleside Railway Bill,<sup>3</sup> and in 1897, to the committee on the Lochearnhead, Saint Fillans, and Comrie Railway (recommitted) Bill.<sup>4</sup>

In 1909 the committee on the Methwold and Feltwell Drainage Bill were instructed to consider and if deemed advisable to substitute for the scheme of taxation provided in the bill a scheme of taxation graduated according to the value of the lands to be taxed.<sup>5</sup>

Permissive instructions may confer on committees powers of inquiry or legislation on matters relevant to the subject-matter of the bill, which might not otherwise be brought to their attention, or which do not come within the ordinary scope of their inquiry.

In 1879 an instruction was given, on the Liverpool Lighting Bill (promoted by the corporation), empowering the committee to whom the bill was referred to inquire and report as to the conditions under which lighting by electricity should be sanctioned by Parliament in the case of local authorities or public companies.<sup>6</sup>

In 1878 an instruction was given to the committee on the Manchester Corporation Water Bill, empowering them to consider the requirements of the populations between Manchester and the lake district, whence was to come the proposed supply.<sup>7</sup> And in 1892, the committee on the Birmingham Water Bill received an instruction empowering them to inquire and report whether it were necessary to extinguish the rights of commoners and others over the large district proposed to be taken for the collection of the water to be supplied under the bill. Exception was taken to the instruction, as being unnecessary, but was overruled by the Speaker.<sup>8</sup> In 1909 and 1910

<sup>1</sup> Corporation of London (Metropolitan Market) Bill, and New River Company Bill, 151 C. J. 55. 175. Bradford Tramways, &c., Bill (as to inclosure of Baildon Moor), 154 C. J. 185. See also 168 ib. 143. 208.

<sup>2</sup> 139 C. J. 70.

<sup>3</sup> 142 C. J. 82.

<sup>4</sup> 152 C. J. 223. 224, 49 Parl. Deb. 4 s. 339-353. This bill (although, in com-

mittee, an unopposed bill) was recommitted to a specially constituted committee, the instruction being given at the same time.

<sup>5</sup> 164 C. J. 300.

<sup>6</sup> 134 C. J. 87; but cf. ib. 112. 124. 314 for later proceedings in this case.

<sup>7</sup> 133 C. J. 68.

<sup>8</sup> 147 C. J. 97, 2 Parl. Deb. 4 s. 626. In 1894 there was a permissive

powers were given to the committees on various water bills to inquire whether adequate provision was made by the bill for the supply of water at reasonable rates to the agricultural community and to any persons whose existing supply might be affected by the proposed works, and to insert clauses compelling the promoters to provide such supply.<sup>1</sup>

In 1890 there was an instruction to the committee on the Metropolitan Railway Bill, empowering them to provide, if they thought fit, notwithstanding the standing order (No. 163) relating to the powers of purchase or amalgamation of companies, for the vesting in the company of another company's undertaking.<sup>2</sup>

In 1883 there was an instruction to the committee on the Metropolitan District Railway Bill, that they had power to insert a clause making it compulsory on the railway company to pull down certain ventilators sanctioned by an Act of a previous session.<sup>3</sup> On several subsequent occasions, the committee on a private bill have been similarly empowered, by a permissive instruction, to insert clauses or provisions for particular objects.<sup>4</sup> In some cases, motions for permissive instructions have been withdrawn, or ruled out of order, as unnecessary, where the powers proposed to be conferred were such as the committee were already able to exercise.<sup>5</sup>

The difficulty which may arise by the imposition on a committee

instruction to the committee on the Furness Railway Bill, empowering them to inquire whether it was expedient to abolish certain dues, 149 C. J. 74; and in 1902, the committee on the North Metropolitan Tramways Bill were empowered to inquire, if they saw fit, as to the company's existing night service of cars, 157 C. J. 131. In the latter case an amendment, proposed with the object of making this instruction mandatory instead of permissive, was negatived, 105 Parl. Deb. 4 s. 972-4.

<sup>1</sup> 164 C. J. 67, 75, 76; 165 ib. 52, 66, 89, 144; 166 ib. 140, 164. See also 163 ib. 159; 169 ib. 99.

<sup>2</sup> 145 C. J. 282. • Similar instructions were given in 1894 to the committee on the Fishguard Bay Railway, &c. (Purchases) Bill, 149 ib. 92; and in 1895 to the committees on the Central Ireland Railway Bill, 150 ib. 180, and the North British Railway Bill, 150 ib. 176, 191, 33 Parl. Deb. 4 s. 396. In 1889 an instruction was given to the committee on

the Liverpool Corporation Bill similarly empowering them, notwithstanding the provisions then existing in a standing order (numbered 171), to provide, if they thought fit, that the corporation might work tramways, 144 C. J. 158.

<sup>3</sup> 138 C. J. 158; order discharged, ib. 284; Metropolitan Board of Works (District Railway) Bill, brought in for the same purpose, ib. 242.

<sup>4</sup> 148 C. J. 187; 149 ib. 158; 150 ib. 115; 165 ib. 184.

<sup>5</sup> London and North Western Railway (Steam Vessels) Bill, 1898 (proposed instruction, April 29, to empower the committee to insert provisions for the regulation of traffic), 56 Parl. Deb. 4 s. 1514. And cf. proceedings on the proposed instructions (withdrawn) on the Londonderry Improvement Bill, 151 C. J. 89, 38 Parl. Deb. 4 s. 661-672, and on the South Eastern and London, Chatham and Dover Railway Companies Bill, 154 C. J. 93, 68 Parl. Deb. 4 s. 940, &c.



of too wide a range of inquiry received an illustration in the case of the Manchester, Sheffield, and Lincolnshire Railway Bill, in 1891. The committee were empowered to take evidence, and report whether the site of the terminus proposed by the bill was the best which could be devised in the interests of the people of London. The committee, by their special report, stated that "in the absence of the definite plans which would be furnished by a rival scheme, they found it impossible to arrive at anything more than a *prima facie* opinion on the alternative sites suggested, or to come to any conclusion concerning them," and that "their experience may justify some hesitation in the adoption of instructions unaccompanied by adequate means for their perfect fulfilment."<sup>1</sup>

Decisions of late years tend to establish the principle that, having regard to the object and purposes of a private bill, instructions must not deal with questions of public policy, which more properly are the subject of a public bill, and that they must be relevant and cognate to the provisions of the bill.

In 1892 the Eastbourne Improvement Act, 1885, Amendment Bill was introduced to repeal a section, for the prohibition of processions on Sunday, which had been secured by the corporation of Eastbourne in their Act of 1885; and notice was given of a mandatory instruction to the committee on the bill to insert further clauses, exempting Eastbourne from the operation of the provision contained in the Roman Catholic Relief Act of 1829,<sup>2</sup> under which Roman Catholic ecclesiastics are practically prohibited from participating in processions. But Mr. Speaker stated that the proposed clauses could not be engrafted on the private bill before the house; and that it would be out of order by an instruction on the bill in question to seek the repeal, in the instance of a particular town, of provisions contained in the general law and passed in the interests of public policy.<sup>3</sup>

On the 8th March, 1892, notice was given of an instruction to the committee on the South Eastern Railway Bill, to inquire into and report on the accommodation, &c., supplied to third-class passengers on the railway. The Speaker privately informed the member in whose name it stood that the instruction was not in order, on the ground that the remedy (if legislation were needed) should be sought in a general statute applicable to all railways alike; that this would

<sup>1</sup> 146 C. J. 154. 388.

<sup>2</sup> 10 Geo. IV. c. 7. s. 26.

<sup>3</sup> 2 Parl. Deb. 4 s. 627.

be a matter of general policy to be considered at the time, not of private, but of public business; and that it would be contrary to the practice of the house to single out the bill of a particular company and impose on it alone conditions applicable to railways generally.<sup>1</sup> And later in the same month, the Speaker, on the same grounds, privately ruled an instruction to be out of order by which it was proposed to direct the committee on the London and North Western Railway Bill to insert a clause in the bill, limiting the hours of labour to eight per day. On the 15th March, 1901, three mandatory instructions, which it was proposed to move, to the committee on the Great Eastern Railway Bill, to insert certain clauses—compelling the company to observe particular conditions in their dealings with their employés and in the terms under which the proposed works were contracted for, and to issue free passes over parts of the line to tenants of the dwellings to be erected under the bill outside London—were all ruled out of order by the Speaker, “because they sought to take the occasion of a private bill and the time of private business to discuss general questions which apply equally to all railways.”<sup>2</sup> And on the 26th March, 1895, Mr. Speaker ruled that a proposed motion for a general instruction to every committee on any railway bill—directing them to inquire and report whether the

<sup>1</sup> In 1894 notice was given of an instruction to empower a committee to insert provisions in a railway bill compelling the company to adapt and open their line—a mineral railway—for the conveyance of passengers. But Mr. Speaker held that the proposal was one of general policy, which, if enforced at all, ought to be enforced on all suitable mineral railways, and that the instruction could not be moved, Barry Railway Bill, 26 Parl. Deb. 4 s. 561. On the 27th April, 1896, it was proposed to move instructions directing the committee on the London and North Western Railway Bill to insert provisions compelling the company to run third-class carriages, and to carry first and second class passengers without an extra charge, on certain mail trains. Mr. Speaker stated that the bill did not refer specially to these points: that under the general law it was competent for a railway company to make the extra charge in question and also to run express trains without third-class carriages; and that

it would be out of order to require the committee to alter the general law in the case of a particular company, 39 Parl. Deb. 4 s. 1707. In 1901 it was proposed to move a mandatory instruction on the Great Southern and Western Railway Bill, to secure the insertion of provisions restraining the company from allowing preferential rates to passengers using the company's hotel; but Mr. Speaker ruled that the matter, being a general question of railway law, could not be raised upon a particular bill, 97 Parl. Deb. 4 s. 1312-1313. See also 4 H. C. Deb. 5 s. 1300.

<sup>2</sup> 91 Parl. Deb. 4 s. 55. See also 44 H. C. Deb. 5 s. 975. On the 7th July, 1898, a motion for a mandatory instruction to secure the insertion, in the Fishguard and Rosslare Railways, &c., Bill, of clauses providing that members attending their Parliamentary duties might travel over the line free of charge, was similarly ruled out of order, 61 Parl. Deb. 4 s. 136.

Board of Trade had any complaint regarding the promoting company in respect of the Railway Regulation (Servants' Hours) Act, 1893, or of the conciliation powers under the Railway Traffic Acts—raised a question of general policy and ought not to be brought on at the time of private business.<sup>1</sup>

On the 2nd March, 1886, a mandatory instruction was moved, on the Belfast Main Drainage Bill, to direct the committee to insert clauses, assimilating the municipal and parliamentary franchise and boundary of Belfast, and making consequential arrangements as to the election and number of aldermen and councillors and as to the division of wards. The chairman of ways and means deprecated the introduction of the question of assimilating the parliamentary and municipal franchises, upon a private bill dealing with the drainage of Belfast, and with regard to the proposal to alter the borough boundary (which involved the question of rating), he pointed out that, under the standing orders, every such alteration should be the subject of notice; and that, in this case, no such notice had been given, but, without any observance of the rules and forms laid down by the house, it was proposed that the committee must extend the boundary of the borough of Belfast. He accordingly moved the previous question, which was carried.<sup>2</sup> In the case of another private bill, introduced in 1896, for the reduction of the municipal franchise in Londonderry and for increasing the number of the municipal wards and extending the municipal limits, an instruction was agreed to, directing the committee to inquire into the extension of the municipal franchise to all parliamentary voters (excepting lodgers but including women) and

“to provide that the burges lists shall be revised and made up by the same persons and at the same time as the parliamentary register, and, if they think fit, to make provision in the bill for the same.”<sup>3</sup>

<sup>1</sup> Mr. Speaker's private ruling.

<sup>2</sup> 141 C. J. 73, 302 H. D. 3 s. 1692-1751.

<sup>3</sup> Londonderry Improvement Bill, 151 C. J. 89, 38 Parl. Deb. 4 s. 661-672. Both upon this bill, and upon a bill, of the same session, “to extend the city of Belfast,” &c. (Belfast Corporation Bill, 1896, 151 C. J. 86, 38 Parl. Deb. 4 s. 563-591), an instruction was also moved, but in neither case passed, to direct the committee to inquire into, and (if they thought fit) to alter the law as to the mode of election of aldermen and councillors.

In 1897 the motion for an instruction which was given to the committee on the Dublin Corporation Bill of that session, directing them to provide for conferring the municipal franchise on women, was objected to on the ground that the bill did not propose any extension of the franchise; but Mr. Speaker held that, as persons would be enabled by the bill to get on the register on different terms to those previously in force, the instruction was in order, although he considered that, to enable the committee to deal

An almost identical instruction, however, which was also given in 1896, to the committee on the Dublin Corporation Bill, affords an illustration of the inconvenience that may arise from instructing a committee to deal with matters outside the scope of the bill. In the latter case the main purpose of the bill (which had passed through the Lords without opposition and was brought from that house late in the session) was to obtain legislative sanction to an agreement between the corporation of Dublin and several adjoining townships regarding the price to be paid for a supply of water; and on the 13th July, when the instruction was proposed—directing the Commons' committee upon the bill to inquire into and deal with the advisability of assimilating the municipal to the parliamentary franchise, before the powers sought by the corporation in the bill were granted—Mr. Speaker expressed doubts as to whether this motion would be in order in connection with the terms of the bill; but on his being assured that there was no objection to it, the proposed instruction was moved and agreed to, an additional instruction, which empowered the committee to deal with the law as to the election of aldermen, &c., and as to the appointment of certain officers elected by the corporation, being passed on the following day.<sup>1</sup> The matter thus referred to the committee, however, assumed a controversial character; an objection to the effect that, in some of the amendments which they inserted in dealing with it, the committee had exceeded their powers, was raised upon the consideration of the bill as amended, and was sustained by Mr. Speaker; and on the 31st July, the bill was recommitted to another committee,<sup>2</sup> who were subsequently instructed to bring the portion of it in question into harmony with the instructions given by the house.<sup>3</sup> When the bill was finally returned to the Lords, it was referred by that house

with the matter, an instruction was necessary, 152 C. J. 62. 70, 46 Parl. Deb. 4 s. 151. 613-623. In 1896 instructions were given to the committees on the Waterford Corporation Bill and on the Drogheda Corporation Bill—both being bills for extending the borough boundaries—to insert clauses providing for the reduction of the rated occupation franchise for the municipal elections, 151 C. J. 53. 267. Cf. also the instruction given on the Blackrock and Kingstown Drainage and Improvement (recommitted) Bill, 1893, directing the committee to insert new clauses assimilating

the rated occupation franchise for the township elections in Blackrock to that in the Kingstown township, 148 C. J. 377. 486. 497.

<sup>1</sup> 151 C. J. 355. 359, 42 Parl. Deb. 4 s. 1305. 1418.

<sup>2</sup> 151 C. J. 406, 43 Parl. Deb. 4 s. 1234-1244. 1317-1318.

<sup>3</sup> 151 C. J. 410, 43 Parl. Deb. 4 s. 1329-1341. The bill was reported on 4th August from the committee to whom it was recommitted, 151 C. J. 413; and was considered as amended and read the third time on 6th August, 151 C. J. 419, 43 Parl. Deb. 4 s. 1651-1677.

to the Examiners, who found that the standing orders had not been complied with in respect of the franchise clauses inserted by the Commons; <sup>1</sup> and these standing orders not being dispensed with, the Lords disagreed to the clauses and amendments dealing with the proposed alteration of the municipal franchise, assigning as a reason for doing so that no reference to these proposals had been contained in the notices for the bill, or in the bill as introduced into Parliament and passed by the first house, and that no opportunity had been given for persons, 'qualified to do so, to object to them; <sup>2</sup> and, on the 13th August, the consideration of the Lords' reasons being deferred (on division) in the Commons for three months, the bill was lost.<sup>3</sup>

On the 29th April, 1892, there was a notice of motion to the effect that an instruction be given to the committee on the London County Council (General Powers) Bill, to consider the desirability of inserting a clause enabling the clerk of the London County Council to correct the totals of the valuation lists in a manner set forth in the instruction; but the Deputy-Speaker stated that, though the bill was an *omnibus* bill, there was no one of its clauses which dealt with any matter cognate to the subject of the instruction, which therefore could not be entertained, not being in order.<sup>4</sup> And on the 3rd March, 1898, notice having been given of an instruction to direct the committee on the Great Northern Railway Bill to provide for an increased number of workmen's trains (to which there was no reference in the bill), Mr. Speaker intimated to the member who had given notice of the motion that the question was one of general policy affecting all railways, and that there being nothing in the bill to which it was germane, the proposed instruction could not be moved.<sup>5</sup>

<sup>1</sup> 128 L. J. 371.

<sup>2</sup> 128 L. J. 402.

<sup>3</sup> 151 C. J. 453, 44 Parl. Deb. 4 s. 716-726.

<sup>4</sup> 3 Parl. Deb. 4 s. 1643.

<sup>5</sup> On the 24th April, 1896, an instruction, to direct the committee on the London and North Western Railway Bill, to provide that the rates and tolls on a particular section of the line should be no higher than on any other branch, was permitted to be moved, as powers were sought in the bill to widen the section in question and the company had previously been authorized to charge exceptional

rates on this section, which were higher than those general on all railways. The proposed instruction was negatived, 151 C. J. 170, 39 Parl. Deb. 4 s. 1615-1626; cf. also the proceedings, 17th March, 1904, on proposed instruction on Lancashire and Yorkshire Railway Steam Vessels Bill, 131 Parl. Deb. 4 s. 1472. But, on the 15th June, 1894, a proposed instruction to the committee on the Dublin, Wicklow and Wexford Railway Bill—to insert clauses to enable the public to take gravel, &c., from the foreshore below the cliffs along which the company's line passed—was ruled out of

On the 7th March, 1899, an instruction of which notice had been given, on the Gas Light and Coke Company Bill, was ruled out of order, because it proposed to refer to the committee on the bill the consideration of the affairs of numerous other independent gas companies to which the bill had no reference. And in other cases an instruction on a private bill has not been permitted to be moved, where the objects proposed by it were clearly of an impracticable kind<sup>1</sup> or its terms were too vague to afford definite directions to the committee.<sup>2</sup>

order, the question having nothing to do with the subject-matter of the bill, which was one for raising additional capital, 25 Parl. Deb. 4 s. 1206. And on the 4th April, 1905, in the case of the Dublin United Tramways Bill which provided for the transfer of certain tramway undertakings to the Dublin United Tramways Company, it was proposed, by means of a mandatory instruction to the committee, to secure the insertion in the bill of a clause empowering the company to supply electric current for the lighting of the Blackrock urban district; but the proposed instruction was not permitted to be moved, because the powers which it was sought to confer were quite outside the scope of the bill (Mr. Speaker's private ruling). The following proposed instructions were also ruled out of order as being outside the scope of the bills to which they respectively referred :

(1) Instruction to direct the committee on the Belfast Harbour Bill, although the bill did not deal with the constitution of the Harbour Board, to inquire whether any change should be made in the qualification for electors, or otherwise regarding the election of members, of the authority, 59 Parl. Deb. 4 s. 182; (2) Instructions to direct the committee on the Belfast Harbour Bill to insert a clause altering the franchise of the Harbour Board and another clause providing for the erection of a police barrack, 96 Parl. Deb. 4 s. 1471; and (3) Instruction to empower the committee on the Belfast Corporation Hospital Bill, 1898, to insert provisions for a grant, by a capital sum or by annual payment out of the rates, to the Mater Misericordiae Hospital in Belfast, 56 Parl. Deb. 4 s. 1173. Cf. also 56 Parl. Deb. 4 s. 1514 (Dublin Port, &c., Bill).

<sup>1</sup> In 1896 notice was given of an instruction to direct the committee on the New River Company Bill to provide that the money paid by the promoters in purchasing part of the Alexandra Park Company's estate should be reinvested in adjacent land, of which the public should have rights of user. But Mr. Speaker held that such an instruction would be out of order, as the latter company were only before the house as willing vendors, on whom no condition could be imposed, nor could they perform what was proposed to be forced on them, viz. to acquire adjacent land, the holders of which had had no notice served on them. Cf. also the proceedings, 16th July, 1902, upon the Brompton and Piccadilly Circus Railway, &c., Bill and the Great Northern and Strand Railway Bill, 111 Parl. Deb. 4 s. 439, 443.

<sup>2</sup> In 1898 an instruction of which notice had been given, on the Fishguard and Rosslare Railway Bill, and by which it was proposed to direct the committee to insert such clauses as would secure the commercial interests of the city and port of Cork, &c., was ruled out of order on the ground that it was too vague and gave no definite instruction to the committee (Mr. Speaker's private ruling 3rd May). And in 1903 Mr. Speaker also ruled out of order, upon the same ground, an instruction by which it was proposed to direct the committee on the Midland and Belfast, &c., Railways Bill (Private Business, 1903, p. 207), to inquire and report whether, in the absence of provisions as to a proper steamship service and as to rates and fares, the bill would affect the trade and commerce of Londonderry without compensating advantages (Private ruling 31st March). On the 14th March, 1901, on the Great Eastern

On the 25th April, 1916, an instruction to the committee on the Local Government (Ireland) Provisional Order (No. 1) Bill to insert in the bill, or in the provisional order thereby confirmed, a clause repealing certain words in section 61 of the Dublin Corporation Act, 1900, was ruled out of order because it proposed to alter the law regulating public-houses in a district which was not affected by this Provisional Order Bill, and no notice, therefore, could have been given to any person affected.<sup>1</sup>

Instructions may be given to committees to divide a bill into two or more bills,<sup>2</sup> or to consolidate two or more bills, or any part or parts thereof.<sup>3</sup>

Instructions for dividing or consolidating bills.

In addition to the various forms of instruction already mentioned, instructions in connection with procedure on private bills are sometimes necessary, which confer on committees power to insert additional provision in a bill, or to make provision in a bill for the alteration of stamp duties, or for the release of money deposited in the Court of Chancery for the completion of a railway, in pursuance of special resolutions of the house (see p. 643). Instructions are also given to committees to secure a hearing for persons who might not otherwise be entitled to give evidence (see p. 696).

Other instructions.

Railway Bill, Mr. Speaker would not permit an instruction, of which notice had been given, to be moved, on the ground that it would be asking the house to debate over again exactly the same question which the member, in whose name it stood, had already raised on the second reading of the bill, 90 Parl. Deb. 4 s. 1536.

objection the committee was instructed to consider on the request of any petitioners the expediency of dividing the bills and in the case of one bill to hear separately the case of one gas company promoting the bill, 165 C. J. 192. 193. 242, 18 H. C. Deb. 5 s. 575.

<sup>1</sup> 81 H. C. Deb. 5 s. 2447.

<sup>2</sup> 127 C. J. 165. In order that the unopposed portions of the bill might proceed as a separate bill the London County Council (General Powers) (suspended) Bill was recommitted to the Local Legislation Committee with an instruction to divide it into two bills and to report the bills, without amendments, except such as were consequential upon the division, 170 C. J. 181, 73 H. C. Deb. 5 s. 2. In the case of certain bills each of which was promoted by and dealt with several gas companies for a common purpose, objection was taken to the difficulty imposed by this method of procedure upon opponents who were necessarily interested in the proposals of only one company. To meet this

<sup>3</sup> Permissive instructions:—To consolidate two bills into one, 145 C. J. 345; 146 ib. 218; 148 ib. 114; 150 ib. 143; 152 ib. 205; 157 ib. 374; 167 ib. 119. To consolidate two bills, or any parts thereof, into one bill, 154 C. J. 145; 156 ib. 109. To consolidate three bills, or any parts thereof, into one or more bills, 154 C. J. 229. To consolidate a hybrid and a private bill, 142 C. J. 192. 217 (Metropolis Management Acts Amendment Bills, 1887). In 1903 the committee on the Great Eastern Railway (No. 1) (recommitted) Bill were empowered to consolidate it and the Great Eastern Railway (No. 2) Bill (which had been committed to the committee at the same time as the Great Eastern Railway (No. 1) Bill)—or any part or parts thereof respectively—into one bill, 158 C. J. 119.

Commit-  
tal of  
private  
bill.

S. O. 208.

When a private bill has been read a second time, and committed, it stands referred,<sup>1</sup> if not a railway, canal, or divorce bill, to the Committee of Selection; if a railway or canal bill, to the General Committee on Railway and Canal bills; and if a divorce bill, to the select committee on Divorce bills (see Chapter XXX.). A bill which is referred to the Examiners after second reading is not committed however until the Examiners have reported compliance with any standing orders not previously inquired into,<sup>2</sup> or if the standing orders have not been complied with, the Select Committee on Standing Orders have resolved that such standing orders should be dispensed with, and the house has agreed thereto.<sup>3</sup>

The Com-  
mittee of  
Selection.

S. O. 98.  
103, 114,  
&c.

The Committee of Selection is a sessional committee, under standing order No. 98, and has consisted since 1908 of eleven members nominated by the house at the commencement of every session, three being the quorum of the committee.<sup>4</sup> In addition to other duties with which it is entrusted,<sup>5</sup> this committee classifies all private bills not being railway or canal bills, nominates the chairmen and members of committees on such bills, and arranges the time of their sitting, and the bills to be considered by them.

<sup>1</sup> On the 22nd June, 1863, after the London (City) Traffic Regulation Bill had been so committed, a motion was made to suspend the standing order, and to commit the bill to a committee of fifteen, ten to be nominated by the house, and five by the committee of selection: but it was not agreed to by the house. Cf. also the proceedings, 22nd May, 1900, on the Birmingham (King Edward VI.) Schools Bill, 83 Parl. Deb. 4 s. 894-5. On the 12th July, 1905, a motion was made to discharge the order of committal of the Administrative County of London, &c., Electric Power Company Bill (which had been read a second time and committed in the ordinary way) and to commit the bill to a specially constituted committee of nine members. This motion, being opposed, stood over till the evening of the day on which the customary committee of four members (appointed in the usual way by the committee of selection) were to meet and consider the bill. Mr. Speaker, on being appealed to, ruled that this committee on the bill must meet and go on with its consideration, although if the proposed motion were afterwards

carried their work would be undone, 149 Parl. Deb. 4 s. 378.

<sup>2</sup> 168 C. J. 36.

<sup>3</sup> 170 C. J. 73.

<sup>4</sup> 163 C. J. 24. Before 1908 the Committee of Selection consisted of the chairman of the Standing Orders Committee and other members nominated by the house. The number of these nominated members was gradually increased, from four to five in 1854, 109 C. J. 410; from five to seven in 1883, 138 ib. 52; and from seven to ten in 1903, 158 ib. 369.

<sup>5</sup> The committee of selection is charged with the nomination of the standing committees (see p. 417), of the chairmen's panel (see p. 417), and of the Parliamentary panel and the joint committee provided for by the Private Legislation Procedure (Scotland) Act, 1899 (see pp. 795, 800), and it is frequently also charged with the nomination of members of other committees (see pp. 355, 427, 662 and 664-666). In the exercise of its various duties the committee of selection has power, under standing order 114, to send for persons, papers, and records.



The General Committee on Railway and Canal bills—which is also a sessional committee, under standing order No. 99—is nominated at the commencement of the session by the committee of selection, and now generally consists of about sixteen members, three being the quorum. The committee of selection may, from time to time, discharge members from attendance on the general committee, and appoints the chairman. As regards railway and canal bills, this general committee has functions similar to those of the committee of selection. It forms such bills into groups: it appoints from its own body the chairman of every committee on such bills,—being, in fact, a panel of chairmen; and it may change the chairman whom it so appoints from time to time. The main object of its constitution is to ensure a communication between the several chairmen, and uniformity in the decision of the committees.

The several duties of these two committees are distinctly prescribed in the standing orders, and a general outline of their proceedings is all that need be given in order to explain the progress of a private bill. Printed copies of all bills are laid by the promoters before the committee of selection, and before the general committee on railway and canal bills, as the case may require, at the first meeting of such committees respectively; and each of these committees forms into groups such bills as may be conveniently submitted to one and the same committee, fixes the time of the first sitting<sup>1</sup> of such committee, and names the bill or bills which shall be taken into consideration on the first day of the meeting of the committee on any group of bills.

The committee on every opposed railway and canal bill, or group of such bills, consists of four members not locally or otherwise interested in the bill or bills referred to them, the chairman being appointed (as already explained) by the general committee, and the other three members by the committee of selection. Committees on other opposed private bills consist of a chairman and three members not locally or otherwise interested, appointed by the committee of selection.<sup>2</sup>

<sup>1</sup> This is subject to standing order No. 211 (*infra*, p. 664) which proscribes a specified interval between the second reading of a bill and its consideration by a committee.

<sup>2</sup> Prior to the 27th July, 1864, committees on opposed bills consisted of five members (cf. standing orders of 1863,

and 119 C. J. 471). And to many of such committees, between the years 1868 and 1903, it was customary (under a provision contained in standing orders 115 and 116) to add an official referee, who assisted in the consideration of the bills referred to them (cf. *infra*, p. 673).

General Committee on Railway and Canal bills.  
S. O. 99 to 101. 103.

Grouping of private bills.  
S. O. 102.

S. O. 105. 106.

Committees on opposed bills.

S. O. 115.

S. O. 116.

Committee on Unopposed Bills.

S. O. 109.  
104.

Every unopposed bill, not being a divorce bill, is referred by the committee of selection—or, if a railway or canal bill, by the general committee—to the Committee on Unopposed Bills, which consists of five members, viz. the chairman of ways and means (who when present is *ex officio* chairman), the deputy chairman, two members—who are selected from time to time, by the chairman of ways and means, from a panel appointed by the committee of selection at the commencement of every session—and the counsel to Mr. Speaker.<sup>1</sup>

What bills the committee of selection regard as opposed.

S. O. 107.  
128.

S. O. 83.

Members of committees on opposed bills to sign declaration.

S. O. 117.

The committee of selection may not consider any bill as an opposed bill unless, within the time appointed, a petition has been presented against it, in which the petitioners pray to be heard by themselves, their counsel, or agents; or unless the chairman of ways and means reports to the house that any unopposed private bill ought to be treated as opposed (see p. 668).

Each member of a committee on an opposed private bill, or group of such bills, before he is entitled to attend and vote, is required to sign a declaration that his constituents have no local interest, and that he has no personal interest in the bill, and that he will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto.

Members of committee on unopposed bills not to vote when locally interested.

S. O. 138.

Notice to be given to members to serve on committee.

S. O. 110.  
111.

In the case of an unopposed private bill, no member of the committee on the bill who is locally or otherwise interested may vote on any question that may arise, although he is entitled to attend and take part in the committee's proceedings.<sup>2</sup>

Under standing order No. 110, the committee of selection is required to give each member—

“Not less than seven days’ notice, by publication in the votes or otherwise, of the week in which it will be necessary for him to be in attendance for the purpose of serving, if required, as a member, not locally or otherwise interested, of a committee on a private bill.”

And by standing order No. 111—

“The committee of selection shall give to each member sufficient notice of his appointment as a member of a committee on any private bill, or group of such bills, and, in every case where a declaration is required to be signed and returned by such member shall transmit to him a blank form of the declaration required, with a request that it may forthwith be returned properly filled up and signed.”

<sup>1</sup> The quorum of this committee is three. In the absence of the chairman of ways and means, or in case he is locally or personally interested in the bill, the deputy chairman, or the next member in rotation, who is not so locally or person-

ally interested, may act as chairman of the committee.

<sup>2</sup> See p. 342 and see also p. 699, for the proceedings of the committee on unopposed bills. And for unopposed bills in the Lords, see p. 750.

If a member neglect to return the declaration in due time, or do not send a sufficient excuse, the committee of selection will report his name to the house, and he will be ordered to attend the committee on the bill; <sup>1</sup> or to attend the house in his place, where, on offering sufficient apology for his neglect, he will be ordered to attend the committee.<sup>2</sup>

Members  
returning  
no  
answer.  
S. O. 113.

If the committee of selection be dissatisfied with his excuse, they will require him to serve upon a committee; when his attendance will become obligatory, and if necessary will be enforced by the house. On the 5th May, 1845, a member did not attend a committee, on a group of railway bills, to which he had been nominated, and his absence was accordingly reported to the house in the prescribed manner.<sup>3</sup> He stated to the house that a correspondence had taken place between the committee of selection and himself, in which he had informed them that he was already serving on two public committees, and that his serving on the railway group committee was incompatible with those duties. But the house ordered him to attend the railway committee.<sup>4</sup> In 1846 the committee of selection, not being satisfied with the excuses of Mr. Smith O'Brien, nominated him a member of a committee on a group of railway bills in the usual manner. He did not attend the committee; his absence was accordingly reported to the house; and he was ordered to attend the committee on the following day. Being again absent, his absence was again reported; he attended in his place in the house and stated that he refused to attend the committee; upon which he was declared guilty of a contempt, and was committed to the custody of the Serjeant-at-arms.<sup>5</sup>

Members  
refusing to  
attend.

Case of  
Mr. Smith  
O'Brien.

The committee of selection have the power of discharging any member or members of a committee, and substituting other members. On the 4th May, 1869, two members were added by the house to the committee on a group of private bills, but without the power of voting.<sup>6</sup>

One mem-  
ber substi-  
tuted for  
another.  
S. O. 113.

<sup>1</sup> 103 C. J. 590. 627; 115 ib. 138; 117 ib. 91; 120 ib. 369 (in this case no order was made).

<sup>2</sup> 115 C. J. 94. 99. 106.

<sup>3</sup> See *infra*, p. 670, as to the standing order (No. 122) under which a report must be made to the house of the absence of members of committees.

<sup>4</sup> 100 C. J. 399, 80 H. D. 3 s. 166.

<sup>5</sup> Special report of committee of selection, 101 C. J. 566. 582. 603, 85 H. D. 3 s. 1071. 1152. 1292. 1300. 1351, 86 ib.

966. 1198. For recent cases in which members, reported absent from a private bill committee, have been ordered to attend, see 155 C. J. 297. 305; 157 ib. 382; 158 ib. 197; 160 ib. 67. For a case in which the Serjeant-at-arms reported his inability to serve a member with the order of the house for his attendance upon a committee, see 160 C. J. 240. 241.

<sup>6</sup> 124 C. J. 177. Cf. also *supra*, p. 428.

Interval  
between  
committal  
of private  
bill and  
sitting of  
commit-  
tee.

S. O. 211.

First  
sitting of  
com-  
mittee  
fixed.

S. O. 105.

Cases of  
departure  
from ordi-  
nary pro-  
cedure in  
committal  
of private  
bills.

An interval of six days is required to elapse between the committal of every private bill and the first sitting of the committee, except in the case of name bills, naturalization bills, and estate bills (not relating to the Crown, church or corporation property, &c.), when there are to be three clear days between the committal and the committee. Subject to this general order, the committee of selection—or, in the case of railway and canal bills, the general committee—fix the time for holding the first sitting of the committee on every private bill.

In all these matters the committee of selection ordinarily proceed in compliance with the standing orders; but where any departure from the standing orders, or the usual practice of the committee, is deemed advisable, or where, for any other reason, a particular mode of dealing with any bills is desired by the house, special orders have been made, or special directions to the committee of selection have been given. For example, the house has directed the committee of selection to refer two or more bills to the same committee,<sup>1</sup> or to form all the bills of a certain class into one group; <sup>2</sup> to refer a bill to another committee; <sup>3</sup> to remove a bill from a group, and refer it to a separate committee; <sup>4</sup> to withdraw a bill from one group and place it in another; to refer private bills to a group of railway bills; <sup>5</sup> or to refer a bill to the chairman of the committee on standing orders, and two other members.<sup>6</sup> Directions have also been given to appoint the first meeting of committees on an earlier day,<sup>7</sup> or forthwith; <sup>8</sup> or not to fix the sitting of committees upon certain classes of bills until a later period; <sup>9</sup> or otherwise dealing with the first meeting of committees.<sup>10</sup> In 1855 the Westminster Land Company Bill was added to a group of private bills directly, by order of the house, without the intervention of the committee of selection; and an instruction was given to the committee on the bill to sit and proceed forthwith.<sup>11</sup>

<sup>1</sup> 100 C. J. 95. 224; 101 ib. 460; 106 ib. 280; 124 ib. 48. 63.

<sup>2</sup> 104 C. J. 248.

<sup>3</sup> 100 C. J. 607.

<sup>4</sup> 105 C. J. 351.

<sup>5</sup> Thames Embankment Bill, and Thames Embankment (Chelsea) Bill, 1868. Transferences such as those mentioned are now more generally carried out by the committee of selection without directions from the house.

<sup>6</sup> Rock Life Assurance Company Bill, 124 C. J. 137.

<sup>7</sup> 120 C. J. 405; 121 ib. 490; 122 ib. 427.

<sup>8</sup> 103 C. J. 700; 105 ib. 513; 107 ib. 300.

<sup>9</sup> 105 C. J. 72. 84; 106 ib. 67.

<sup>10</sup> 109 C. J. 406; 111 ib. 256; 113 ib. 119. 254. 303.

<sup>11</sup> 110 C. J. 279.

Sometimes private bills affecting the metropolis or other important localities, or dealing with a subject which, in the opinion of the house, is of special interest, have been referred—either with, or without, an instruction—to a select committee nominated (like the committee on a hybrid bill<sup>1</sup>) partly by the house and partly by the committee of selection, or otherwise exceptionally constituted. Thus, in 1871, several private bills promoted by the Metropolitan Board of Works were committed to a select committee of ten members, five to be nominated by the house, and five by the committee of selection.<sup>2</sup> In 1878 an order was made referring every opposed tramway bill, of that session, which authorized the use of mechanical power, to a select committee of nine members, five of whom were nominated by the house and four by the committee of selection.<sup>3</sup> In 1896 a select committee was appointed of nine members (four nominated by the house and five by the committee of selection) to whom all bills promoted by the London water companies were committed.<sup>4</sup> And other private bills have been referred to select committees of eleven members, six to be nominated by the house, and five by the committee of selection;<sup>5</sup> or of nine members of whom five or four were nominated by the house, and four or five by the committee of selection;<sup>6</sup> or of seven members, all nominated by the committee of selection.<sup>7</sup> Private bills have been committed to the select committee on a hybrid bill.<sup>8</sup> In 1882 several private bills for electric

Private bills referred by house to exceptionally constituted committees.

<sup>1</sup> Cf. *supra*, p. 354.

<sup>2</sup> 126 C. J. 59. 65; and cf. 122 C. J. 65.

<sup>3</sup> 133 C. J. 52.

<sup>4</sup> 151 C. J. 116. 117.

<sup>5</sup> London Streets and Buildings Bill, 1894, 149 C. J. 56.

<sup>6</sup> Manchester Corporation Water Bill, 1878 (133 C. J. 62); Liverpool Corporation Water Bill, 1880 (135 ib. 175); London County Council (General Powers) and London Improvements Bills, 1893 (148 ib. 84. 233); London Water (Transfer) Bills, 1895 (150 ib. 53. 57. 163); Belfast Corporation Bill, 1896 (151 ib. 80); Fishguard and Ross-lare Railways, &c., Bill, 1898 (153 ib. 172); Great Southern and Western, and other Irish Railways, Bills, 1899 (154 ib. 80); and South Eastern and London, Chatham and Dover Railway Companies Bill, 1899 (154 ib. 96). In other cases a motion has been made to commit a private bill to a committee constituted in a similar

manner, but has been negatived (127 C. J. 75; 128 ib. 73; &c.). Unless the question for committing a private bill to such an exceptionally constituted committee is put and agreed to, the bill stands referred to the committee of selection, or the General Committee, in the ordinary way. In 1868 all bills relating to gas companies in the metropolis were referred to a select committee of five members, whom the committee of selection were afterwards ordered to nominate; and a hybrid bill, the Metropolitan Gas Bill, was recommitted to this committee (123 C. J. 66. 74. 126).

<sup>7</sup> 155 C. J. 101.

<sup>8</sup> Gas Light and Coke, and the Imperial Gas, Companies' Bills to the committee to which the Metropolitan Gas (public) Bill had been recommitted, 122 C. J. 205. 207. 209; certain gas bills to the committee on the Metropolitan Gas Companies (hybrid) Bill, 130 C. J. 216; London Parochial Charities (private) Bill to

lighting were referred to the select committee, consisting of fifteen members (nine nominated by the house and six by the committee of selection), upon a public (Electric Lighting) bill.<sup>1</sup>

Local  
Legisla-  
tion Com-  
mittee.

In the session of 1882 all private bills promoted by local authorities and relating to police or sanitary regulations were for the first time referred, by an order of the house, to a select committee specially constituted for their consideration by the committee of selection ;<sup>2</sup> and, under a more or less similar order, this " Police and Sanitary " Committee was annually appointed from 1886 till 1908 except in 1901 and 1902.<sup>3</sup> In 1909 and subsequent sessions the reference to the committee has been extended so as to include all private bills promoted by municipal and other local authorities by which it is proposed to create powers relating to police, sanitary or other local government regulations in conflict with, deviation from, or excess of the provisions of the general law,<sup>4</sup> and the committee has been known as the " Local Legislation " Committee. Its duties are detailed later (p. 713).

Private  
bills re-  
ferred to  
a joint  
com-  
mittee.

In the session of 1873, pursuant to the recommendation of a joint committee of 1872, those railway and canal bills which contained certain powers of transfer and amalgamation, were committed to a committee of three members to be joined by a committee of three lords.<sup>5</sup> In this case the standing orders relating to the constitution of committees upon private bills were suspended ; and the ordinary rules of *locus standi* <sup>6</sup> were superseded by a general order, referring to the committee all petitions against the bills, which prayed to be heard, up to the date of the order. Standing order No. 124, which gives a second or casting vote, was also suspended, in order that the rule of the Lords, "*semper præsumitur pro negante*," might be adopted.<sup>7</sup>

the committee on the Parochial Charities (London) (public) Bill, 137 C. J. 55. 56. 89 ; North Killingholme Pier (private) Bill [Lords] to the committee on North Killingholme (Admiralty Pier) Bill [Lords] a hybrid bill, 167 C. J. 381. 393.

<sup>1</sup> 137 C. J. 142. 165.

<sup>2</sup> 137 C. J. 98.

<sup>3</sup> In these two sessions opposed " Police and Sanitary " Bills were dealt with by two Private Bill Committees, unopposed bills of the same character being considered by the Committee on Unopposed Bills.

<sup>4</sup> 164 C. J. 43.

<sup>5</sup> 128 C. J. 179.

<sup>6</sup> *Infra*, pp. 673, 696.

<sup>7</sup> 128 C. J. 209, and see *supra*, pp. 433.

444. In 1900 the Dublin Corporation Bill and the Clontarf Urban District Council Bill (both originating in the Commons) were committed to a select committee of four members to be joined with a committee of four Lords, 155 C. J. 141 ; and certain railway bills originating in the Lords were committed to a committee constituted in the same manner, Railways (Ireland) Amalgamation Bills, 155 C. J. 129. 141. 165. 172. 321. 334. In 1907 the Metropolitan Water Board (Charges, &c.)

With regard to any private bill which—in variance from the ordinary rule—is not referred to the committee of selection or the general committee, the clerk of the committee to which it is referred gives at least four clear days' notice to the Committee and Private Bill Office of the day and hour appointed for the first meeting of the committee on the bill if it is an opposed bill, and one clear day's notice if the bill is an unopposed or recommitted bill; and if this meeting be postponed he gives immediate notice of such postponement. Precisely similar notices are given to the Committee and Private Bill Office by the clerk of the committee of selection or the general committee with regard to every private bill referred (as is the ordinary rule with all except Divorce bills) to one or other of these two committees.

Before the sitting of the committee on a private bill, certain proceedings must be taken by the promoters. The agent is required to deposit in the Committee and Private Bill Office a "filled-up" bill, signed by himself, as proposed to be submitted to the committee, two clear days before the meeting of the committee; and a copy of the proposed amendments is to be furnished by the promoters to such parties petitioning against the bill as shall apply for it, one clear day before the meeting of the committee.<sup>1</sup>

Under standing order No. 80, as already described (*supra*, p. 626), it is the duty of the chairman of ways and means to examine all private bills, whether opposed or unopposed, with the assistance of the counsel to Mr. Speaker, and to call the attention of the house, and also, if he think fit, of the chairman of the committee on every opposed private bill, to all points which may appear to him to require

Notices to be given of meeting of committee on private bill; and of any postponement of such meeting.  
S. O. 236.

The "Filled-up" bill to be deposited.  
S. O. 237.

Supervision by the chairman of ways and means.  
S. O. 80.  
82. 83.

Bill and the Metropolitan Water Board (Various Powers) Bill were committed to a committee of five members of each house, 162 C. J. 68. 86. In 1911, the Metropolitan Water Board (New Works) Bill [Lords] was committed to a joint committee of four members of each house and to this committee the Thames Conservancy Bill which originated in the House of Commons was also committed, 166 C. J. 75. 87. 103. In all these cases the Commons' members were nominated by the committee of selection. Cf. *supra*, p. 442 (as to joint committees); and *infra*, p. 788, *n.* (Provisional Order Bills) and Chapter XXXII. (joint committee under the Private Legislation Procedure (Scot-

land) Act, 1899).

<sup>1</sup> In 1845 certain committees upon bills reported that no filled-up bill had been deposited by the agent as required, and that the committee had therefore declined to proceed with the bill, and had instructed the chairman to report the circumstance to the house (100 C. J. 261. 302). In these cases the practice has been to revive the committees, and to give them leave to sit and proceed on a certain day, provided the filled-up bill shall have been duly deposited (100 C. J. 302. 304). Cf. also the objection raised regarding the "filled-up" bill in the case of the Truro, &c., Railway Bill (Group 2, April 18th), 1894.

it; and under standing order No. 83 he is at liberty, at any period after a bill has been referred to a committee, to report any special circumstance regarding it, or to inform the house that any unopposed bill should be treated as an opposed bill. To facilitate this supervision, the agent is not only required to lay copies of the original bill before the chairman of ways and means and the Speaker's counsel as already described (see p. 626); but two clear days before the day appointed for the consideration of the bill by a committee, copies of the bill, as proposed to be submitted to the committee, must be laid before the chairman and counsel, duly signed, by the agent, together with copies of any of the estimates and statements deposited in accordance with standing order No. 36A.

Filled-up bill laid before the chairman of committees, House of Lords.

In the House of Lords,<sup>1</sup> copies of the bill, as proposed to be submitted to the committee on the bill in the Commons, are also laid before the Lords' chairman of committees and his counsel; and a simultaneous examination of the bill is consequently proceeding in both houses. Amendments are suggested or required by the authorities in both houses, which are either agreed to at once by the promoters, or after discussion are insisted upon, varied, modified, or dispensed with.

Supervision by public departments.

The promoters are similarly in frequent communication with public boards or government departments,<sup>2</sup> who, again, are in communication with the chairman of ways and means and the Lords' chairman of committees. Thus, the Board of Trade assist in the revision of bills relating to railways, tramways, electric lighting, patents, weights and measures, tidal waters, harbours,<sup>3</sup> docks and shipping, and other matters connected with the general business of that department—suggesting such amendments as they think necessary for the protection of the public, or for the saving of private rights. Where there are naval dockyards in any harbours, ports, or estuaries, the Admiralty may reserve its jurisdiction, and require protective clauses to be inserted; or may withhold the consent of the Crown to the execution of the proposed work. Where Crown

<sup>1</sup> See S. O. (H. L.), No. 140n.

<sup>2</sup> Copies of all private bills have to be laid before the Treasury, and the Post Office. The other departments with whom various private bills must be similarly deposited, and the time for such deposits, are set out in detail in standing orders 33 and 60. See also standing order 175A as to notice to the

Attorney-General in certain cases of bills dealing with charities.

<sup>3</sup> Where a bill comes within the provisions of the Preliminary Inquiries Act, 1851 (14 & 15 Vict. c. 49; amended by the Harbour Transfer Act, 1862, 25 & 26 Vict. c. 69), amendments are introduced in compliance with reports from the Board of Trade.



property is affected, the Commissioners of Woods, who may give or withhold the consent of the Crown, have the bill submitted to them, and insist upon the insertion of protective clauses, or the omission of objectionable provisions. Bills promoted by local authorities for the improvement and sewerage of towns, and for the supply of gas and water, receive consideration by the Local Government Board.<sup>1</sup> And in case a bill should affect the public revenue, similar communications will be necessary with the Treasury, and other revenue departments. Before the meeting of the committee on a private bill, the promoters also, by proposing amendments of their own, endeavour to conciliate parties who are interested, and to avert opposition.

When the amendments consequent upon these various proceedings have been introduced, the printed bill, with all the proposed amendments and clauses inserted, in manuscript, is in a condition to be submitted to the committee: but care must be taken, in preparing these amendments, that they are within the " order of leave,"<sup>2</sup> that they involve no infraction of the standing orders, and are not excessive in extent.<sup>3</sup> Where it was proposed to leave out the greater part of the clauses in the original bill, and to insert other clauses, the chairman of ways and means submitted to the house that the bill should be withdrawn.<sup>4</sup>

At the first meeting of a committee on a private bill copies of the bill as proposed to be submitted to them must be laid, duly signed, by the agent, before each member of the committee.

No committee on an opposed private bill, or group of such bills, can proceed to business until the required declaration<sup>5</sup> has been signed by each of the members.<sup>6</sup> If a member who has signed this declaration should subsequently discover that he has a direct pecuniary

Limits to such amendments before sitting of the committee.

Copies of bill to be laid before members. S. O. 137. Signature of declaration by members. S. O. 117.

<sup>1</sup> The powers of the Secretary of State in such cases were transferred, by the Local Government Act, 1871, to the Local Government Board.

<sup>2</sup> See *supra*, p. 633, n. 2.

<sup>3</sup> 108 C. J. 406.

<sup>4</sup> Bristol Parochial Rates Bill, 1845; Porthleven Harbour Bill, 1869.

<sup>5</sup> *Supra*, p. 662.

<sup>6</sup> 109 C. J. 207; Suppl. to Votes, 1854, pp. 605-6; 117 C. J. 258, &c. On the 28th February, 1860, leave was given by the house to the committee on Group 1 of Railway Bills to sit and proceed to business, notwithstanding that one of the

members (who had received notice of his appointment to the committee) had not signed the required declaration (115 C. J. 94). And on the 9th July, 1900, the committee on Group J. of Private Bills, having proceeded with the business referred to them, although one of the members of the committee (who was reported absent) had failed to sign his declaration, the house ordered that the proceedings before the committee should, notwithstanding, " be deemed to be, and be, valid," 155 C. J. 304. 305, 85 Parl. Deb. 4 s. 939. See also 166 C. J. 341, 28 H. C. Deb. 5 s. 1012; 168 C. J. 75.

interest in a bill, or in a company who are petitioners against a bill, he will state the fact to the committee, and will be discharged by the house, or by the committee of selection, from further attendance.<sup>1</sup>

**Quorum.** When all the members have signed the declaration, the committee may not proceed if more than one of the members be absent, unless by special leave of the house; but no member of a committee on an opposed private bill may absent himself, except in case of sickness, or by order of the house.<sup>2</sup> Members not present within one hour of the time of meeting, or absenting themselves, are reported to the house at its next sitting, when they are either directed to attend at the next sitting of the committee,<sup>3</sup> or, if their absence has been occasioned by sickness,<sup>4</sup> domestic affliction,<sup>5</sup> or other sufficient cause, they are discharged from further attendance.<sup>6</sup>

**Proceeding suspended if quorum not present.** If at any time more than one of the members be absent, the chairman suspends the proceedings, and if, at the expiration of an hour, more than one member be absent, the committee is adjourned to the next day on which the house shall sit, when it meets at the hour at which it would have sat if there had been no such adjournment.

**When quorum cannot attend.** If after a committee has been formed, a quorum of members cannot attend, the chairman reports the circumstance to the house, when the members still remaining will be enabled to proceed, or such orders will be made as the house may deem necessary.<sup>7</sup>

**Absence of chairman.** If the chairman be absent, the member next in rotation on the list of members, who is then present, is to act as chairman: but in the case of a railway and canal committee, only until the general committee shall appoint another chairman, if they think fit.<sup>8</sup>

<sup>1</sup> 100 C. J. 386; 101 ib. 904; 104 ib. 357 (and Suppl. to Votes, 1849, p. 168); 105 C. J. 225 (and Suppl. to Votes, 1850, p. 72); 106 C. J. 146 (and Suppl. to Votes, 1851, p. 312); 108 C. J. 518. 524 (and Suppl. to Votes, 1853, p. 777); 113 C. J. 200; 115 ib. 218; 147 ib. 398, &c.

<sup>2</sup> 105 C. J. 418. (Leave given to a member to absent himself from a committee on a group of railway bills for one day on account of urgent business.)

<sup>3</sup> 155 C. J. 297. 305; 157 ib. 382; 158 ib. 197; 160 ib. 67; &c.; and cf. *supra*, p. 663. In some cases no order has been made, 163 C. J. 183; 157 ib. 95; 159 ib. 97. 127, &c.; but cf. 68

Parl. Deb. 4 s. 24.

<sup>4</sup> 158 C. J. 95.

<sup>5</sup> 160 C. J. 208. 217.

<sup>6</sup> This is usually done by the Committee of Selection (*supra*, p. 663, and standing order 113) but occasionally by the house (110 C. J. 294; 112 ib. 168; 122 ib. 97, &c.).

<sup>7</sup> 145 C. J. 402; 152 ib. 143; and cf. 67 Parl. Deb. 4 s. 27.

<sup>8</sup> 112 C. J. 193; 133 C. J. 113; and cf. the proceedings on the North Eastern Railway bills (committee on Group 7), 24th and 27th June, 1892, 147 C. J. 398, 5 Parl. Deb. 4 s. 1920.

All petitions in favour of or against or otherwise relating to private bills or bills to confirm provisional orders or certificates—excepting petitions for additional provision<sup>1</sup>—are now presented to the house, not in the usual way of presenting petitions, but by depositing them in the Committee and Private Bill Office, where they may be deposited by a member, party, or agent. Any petitioner may withdraw his petition, or his opposition, on a requisition to that effect being deposited in the Committee and Private Bill Office, signed by himself or by the agent who deposited the petition.<sup>2</sup>

Presentation and withdrawal of petitions in favour of, against, or relating to private bills.  
S. O. 205, 206.

Petitions in favour of private bills are not referred to the committee, as the petitioners are not parties to the bill. On one side are the promoters, and on the other petitioners against it: but petitioners in favour of the bill can claim no hearing before the committee, except as witnesses. It has been intimated that counsel may allude to the presentation of such petitions in argument, but may not examine witnesses in respect of their contents or signatures.<sup>3</sup>

Petitions in favour.

Petitions against a private bill originating in the House of Commons must be deposited on or before the 12th February; and petitions against a provisional order bill (originating in the Commons) must be deposited not later than seven clear days after notice has been given of the day on which the bill will be examined. In the case of bills (including provisional order bills) which are brought from the House of Lords: of bills which the promoters have been permitted to deposit after the prescribed time; <sup>4</sup> and of bills promoted by the London County Council and introduced under standing order 194B,<sup>5</sup> a petition against the bill may be deposited at any time not later than ten clear days after the first reading.<sup>6</sup> Every petition against a private bill (or a provisional order bill) which has been deposited within the time thus prescribed or has been otherwise deposited in accordance with the standing orders, and in which the petitioners

Petitions against bills to be deposited before a prescribed time and to stand referred to the committee.  
S. O. 128, 210.

<sup>1</sup> *Supra*, p. 642.

<sup>2</sup> Cf. the proceedings on the Thames Conservancy Bill, 149 C. J. 121; on the Thames Tunnel, &c., Bill (Group 2), 12th and 13th June, 1860; and on the South Yorkshire, &c., Railway Bill (Group 8), 27th June and 1st July, 1890.

<sup>3</sup> Minutes of committee on Group 2 of Railway Bills, 1861 (17th April).

<sup>4</sup> *Supra*, p. 639.

<sup>5</sup> *Supra*, p. 597.

<sup>6</sup> When the 12th of February falls on a Sunday, the petitions required to be

deposited on or before that day have to be deposited on or before Saturday, the 11th February. In the other cases the deposit may be made on the Monday, if the last day in the period prescribed for depositing a petition falls on a Sunday; cf. 2 Clif. and Steph. 4. In the event of these periods expiring during an adjournment of the house other than an adjournment from Friday till Monday, the time is extended under standing order 224A to the first day on which the house sits after the adjournment.

pray to be heard by themselves, their counsel, or agents, stands referred to the committee on the bill, under standing order No. 210, without any distinct reference from the house.<sup>1</sup> And, subject to the rules and orders of the house, such petitioners are to be heard upon their petition accordingly, if they think fit, and counsel heard in favour of the bill against such petition. Part of a petition having been omitted by mistake, and afterwards added, it was ruled that such part was not referred to the committee.<sup>2</sup>

Rules as  
to hearing  
petitioners  
against  
bills.  
S. O. 128.

S. O. 128.

No petitioners against a private bill (or provisional order bill) will be heard before the committee unless their petition has been prepared and signed in strict conformity with the rules and orders of the house, and has been deposited within the time limited—except where the petitioners complain of any matter which may have arisen in committee, or of any proposed additional provision, or of the amendments as proposed in the filled-up bill.<sup>3</sup>

Petitions  
deposited  
after time.

If a petition be presented after the time limited, the only mode by which the petitioners can obtain a hearing is by depositing a petition, praying that the standing orders be dispensed with in their case, and that they may be heard by the committee.<sup>4</sup> The petition will stand referred to the standing orders committee; and if the petitioners be able to show any special circumstances which entitle them to indulgence, and, particularly, that they have not been guilty of *laches*, the standing orders will be dispensed with.<sup>5</sup>

<sup>1</sup> As to petitions against bills "substituted" for orders under the Private Legislation Procedure, Scotland Act, 1889, see *infra*. Chapter XXXII.

<sup>2</sup> 83 H. D. 3 s. 487.

<sup>3</sup> See *infra*, p. 715. Petitions against alterations are not infrequently presented by parties who object to alterations, proposed to be made in the bill in committee, which might affect them. Where, however, these alterations are proposed only by petitioners against the bill, the promoters are held to be fully competent to defend their bill without the intervention of the petitioners against alterations; and in such cases it is not usual for the committee also to hear the petitioners against alterations unless the committee or the promoters should be disposed to accept the alterations so proposed.

<sup>4</sup> In the case of unopposed bills which the chairman of ways and means has ordered to be treated as opposed (see p.

608), the house has ordered that petitions against the bill presented within a specified period should be referred to the committee on the bill, 156 C. J. 240; 166 ib. 81. For instructions to committees to

which unopposed bills have been recommended to hear witnesses, see 157 C. J. 224, 49 Parl. Deb. 4 s. 339; 162 C. J. 422.

<sup>5</sup> Standing orders committee report. That standing order 128 ought to be dispensed with, 159 C. J. 48, &c.; ought not to be dispensed with, 159 ib., 235, &c. In 1905 the standing orders committee having reported, in the case of a petitioner against the Great Northern (Ireland), &c., Railways Bill, that standing order 128 ought not to be dispensed with, the house ordered that the committee's resolution be referred back to them, to consider whether under the circumstances of the case the standing order should not be dispensed with; but the committee again resolved that it should not, 160 C. J. 61. 117. 128.

Where petitioners have died after the deposit of their petitions, their <sup>Death of</sup> sons, or their agents or executors, have petitioned to be heard, and, <sup>peti-</sup> on the report of the standing orders committee, have been permitted <sup>tioners.</sup> to appear and be heard upon the petitions of the deceased petitioners,<sup>1</sup> or to deposit a new petition after the time limited.<sup>2</sup>

No petition will be considered which does not distinctly specify <sup>Grounds</sup> the grounds on which the petitioners object to any of the provisions <sup>of objec-</sup> of the bill. The petitioners can only be heard on the grounds so <sup>tion to be</sup> stated. If not specified with sufficient accuracy, the committee <sup>specified.</sup> may direct a more specific statement to be given, in writing, but <sup>S. O. 127.</sup> limited to the grounds of objection which had been inaccurately specified; but this power has been seldom exercised.<sup>3</sup>

Such being the general rules relating to petitions, it is now necessary <sup>Locus</sup> to describe the mode of adjudicating upon formal objections, on the <sup>standi of</sup> part of promoters, to petitions against a private bill, and upon the <sup>petitioners</sup> petitioner's rights to be heard before the committee appointed to <sup>against</sup> deal with the bill. Prior to 1864, all such questions were heard and <sup>private</sup> determined in both houses—as they still are in the Lords—by the <sup>bills in</sup> committee on each bill. Considerable objection was raised to this <sup>Commons.</sup> practice on the ground of its inconvenience and expense, counsel and witnesses having often been kept in attendance on behalf of petitioners who were adjudged, at the eleventh hour, to have no claim to be heard. With a view to obviate these objections, and at the same time to introduce greater uniformity and certainty into the decisions upon these important points, the adjudication of questions of *locus standi* was entrusted by the Commons in 1865 to the "Referees of the House upon Private Bills," who had been constituted by a standing order passed in the preceding year.<sup>4</sup>

<sup>1</sup> Petition of F. Hopkins against the Lincolnshire Estuary Bill, 1851, 106 C. J. 226. 233. See also the proceedings in the committee on the Great Western Railway (Steam Vessels) Bill, 29th June, 1909 (Group 5 of Railway Bills), as to the circumstances and conditions under which certain persons who were parties to, and had contributed to the cost of, a petition against the bill, although they were not signatories thereof, were allowed to be heard upon the petition, when the persons who had signed it did not enter an appearance upon it.

<sup>2</sup> Petition of the Duke of Portland against the Ardrossan and Glasgow Rail-

way Bill, 1854 (109 C. J. 206, and Suppl. to Votes, 1854, p. 606). Petition of C. Morrison against the Metropolitan Inner Circle Railway Bill, 1878 (133 C. J. 112, and Private Business, 1878, p. 188), &c.

<sup>3</sup> Cf., upon this point, the recommendation of the Select Committee on Private Business, Parl. Pap. (H. C.), sess. 1902, No. 378, p. ix.

<sup>4</sup> As originally constituted, the Referees consisted of the chairman of ways and means, and other members, the Speaker's counsel, and several official referees who were not members of the House. Until 1868 the referees sat at three courts, one of which dealt only with

Referees  
upon pri-  
vate bills;  
their con-  
stitution  
and  
duties;  
S. O. 87.  
89.

As at present constituted under this standing order (No. 87), in its amended form, the Referees consist of the chairman of ways and means, and the deputy chairman, with not less than seven other members of the house, who are appointed by Mr. Speaker for such periods as he thinks fit. They have the assistance of the counsel to Mr. Speaker; and their duty, as defined by standing order No. 89, is to decide—

“Upon all petitions against private bills, or against provisional orders, or provisional certificates, as to the rights of the petitioners to be heard upon such petitions, without prejudice, however, to the power of the select committee to which the bill is referred to decide upon any question as to such rights arising incidentally in the course of their proceedings.”

Under standing order No. 88—

And rules  
of pro-  
cedure.  
S. O. 88.  
151.

“The practice and procedure of the referees, their times of sitting, order of business, and the forms and notices required in their proceedings, shall be prescribed by Rules, to be framed by the chairman of ways and means, subject to alteration by him as occasion may require, but only one counsel shall appear before such referees in support of a private bill, or in support of any petition in opposition thereto, unless specially authorized by the referees.”

By one of the rules made by the chairman of ways and means<sup>1</sup> under this standing order, the promoters of a bill who intend to object to the right of petitioners to be heard against it, are to give notice of such intention, and of the grounds of their objection, to the clerk to the referees and to the agents for the petitioners, not later than the eighth day after the day on which the petition was actually deposited in the Committee and Private Bill Office;<sup>2</sup> but the referees

*locus standi* questions. The two remaining courts dealt with the engineering estimates, and other particulars, of bills referred to the referees, under standing orders, for this purpose; and the referees were also empowered in some cases to deal with the whole subject-matter of a bill. (Cf. the S. O.'s passed in 1864 & 1865 and numbered 93–96 in 1865, which were repealed 17th March, 1868; and the Instruction to the Committee of Selection, 1st March, 1867.) But the consideration by the referees, in these two courts, of these engineering and other matters was discontinued in 1868; and since that year there has only been one Court of Referees—that, namely, for the determination of *locus standi* questions. From 1868 to 1903, however, the official referees already mentioned were regularly associated with

committees on private bills, to which they were appointed, by the Committee of Selection or the General Committee on Railway, &c., Bills, under standing order: they assisted the committees in their consideration of the bills; and until 1876 they also possessed the power of voting. In 1903 this appointment of official referees was finally discontinued. Cf. Report of Select Committee on Private Business, Parl. Pap. (H. C.), sess. 1902, No. 378, Appendix 8; Clifford, ii. 804–813; and Report from Select Committee on Referees on Private Bills, Parl. Pap. (H. C.), sess. 1876, No. 108; 131 C. J. 101. 120.

<sup>1</sup> The present rules are dated February, 1911.

<sup>2</sup> The time allowed for serving such notices of objection is exclusive of the day

may permit such notices to be given, under special circumstances after the time limited.<sup>1</sup> Such notices may also be withdrawn by notice in writing to the clerk to the referees.

On the day appointed for hearing any case before the court of referees, it has to be proved that the notices of objections have been duly served. If no one appears in support of the petition, the *locus standi* of the petitioners is disallowed.<sup>2</sup> If the petitioners appear—their petition against the preamble or clauses of the bill, the statement of objections to their right to be heard, and the bill itself, being before the court—the counsel for the petitioners supports their claim; and the counsel for the promoters is heard in reply,—the speeches being thus limited to one on each side. For the purposes of argument on questions of *locus standi*, the allegations of a petition are ordinarily admitted: but where the rights of petitioners to be heard depends upon special facts which are disputed, they may be called upon to give *prima facie* evidence in support of their case.<sup>3</sup>

Some petitioners pray to be heard against the preamble and clauses of the bill; some against certain clauses only; and others pray for the insertion of protective clauses, or for compensation for damage which will arise under the bill.

Peti-  
tioners'  
opposition  
indicated  
by their  
petitions.

The *locus standi* of a petitioner is always limited to the points alleged in his petition. It is often still further limited by a decision of the court disallowing him a *locus standi* except against some, only, of those provisions to which he objects in the bill.<sup>4</sup> In some cases the referees in allowing a general or "unlimited" *locus standi* against a bill, have left the relevancy of some of a petitioner's allegations for the determination of the committee.<sup>5</sup>

*Locus  
standi  
limited.*

on which the petition was deposited, Smethurst, 6, App. 97; 2 Clif. & Steph. 2. It has been ruled that the service of such notices by post is not sufficient: but under certain circumstances it has been allowed, Smethurst, 7, App. 98; 3 Clif. & Rick. 376.

<sup>1</sup> Permission granted, Rick. & M. 174; not granted, Rick. & S. 11. 159.

<sup>2</sup> Smethurst, 8, App. 91.

<sup>3</sup> Smethurst, 11. 12, App. 93; 1 Clif. & Steph., App. 41; 3 Clif. & Rick. 155. 31c 319; 1 Saund. & A. 294. After the petitioners have called evidence in support of their *prima facie* case, the promoters are not permitted to call rebutting evidence, 1 Saund. & A. 197-8.

<sup>4</sup> In giving its decision in such cases the court limits the petitioner's *locus standi*, not to certain portions of his petition, but to certain portions of the bill. Cf. 2 Clif. & Rick. 130; 2 Saund. & A. 191. When the parties have come to an agreement before the court, the *locus standi* of the petitioners is usually disallowed except to the extent to which the agreement goes, 2 Saund. & B. 11; or a limited *locus standi* allowed, 2 Saund. & B. 70; but in some cases no order is made, 2 Saund. & B. 18. 54.

<sup>5</sup> 1 Clif. & Rick. 47; 2 ib. 130. And cf. Rick. & S. 117-120. 330; 2 Saund. & A. 182.

Practice of  
the court  
regarding  
*locus  
standi*  
cases.

Upon the commencement of their jurisdiction in 1865, the referees took as the basis of their practice the principles and precedents contained in the decisions, regarding the *locus standi* of petitioners, that had previously been given by individual committees; and they reduced to a system, as far as possible, the rules affecting the rights of petitioners to be heard. In the course of time this system has been modified, not only by the interpretations and decisions of the court itself, but by the additions and alterations that have been made in the standing orders relating to *locus standi*. Generally speaking, it may be said that petitioners whose property or interests are proved to be directly and specially affected by a bill have a *locus standi* before the committee. But so many exceptional circumstances naturally arise in each instance that, in the following pages, nothing beyond a very brief review can be given of the more important cases determined by the court. For more detailed information, the reader must consult the invaluable series of "*Locus Standi Reports*," to which frequent references are here given.<sup>1</sup>

Land-  
owners'  
*locus  
standi*.

It has been laid down, as an established practice, that the owners of land proposed to be compulsorily taken—and also the lessees and occupiers, on whom, as on owners, the notices required by the standing orders of both houses are to be served—should always be heard against both the preamble and the clauses of a bill.<sup>2</sup> The same unlimited ("*landowner's*") *locus standi* has also been granted to the owner of minerals,<sup>3</sup> and to the lord of a manor,<sup>4</sup> claiming to be heard against bills affecting their property or rights: to magistrates and councillors having an interest in the lands or a right to gravel on the foreshore, within their burgh or barony;<sup>5</sup> and to other petitioners who have been held to "have an interest" in land

<sup>1</sup> For reports of cases of *locus standi* decided by the Court of Referees in 1865 (the first year of its jurisdiction), and in 1866, cf. Smethurst. For the years covered by subsequent reports of cases, see the Table of Abbreviations under (Clif. & Steph., Clif. & Rick., Rick. & M., Rick. & S., Saund. & A., and Saund. & B.

<sup>2</sup> It has been ruled that a petitioner whose petition alleges that his land is taken and who prays to be heard against the preamble and clauses of the bill, may be heard against the bill generally, even though his petition does not allege that he will be injured, or that the railway proposed by a bill is unnecessary, and

though it contains no reference to the preamble except in the prayer of the petition. Cf. Resolution of General Committee on Railway and Canal Bills, 1861; and 1 Clif. & Rick. 207; 3 ib. 301. 457. Petitioners have been refused a *locus standi* when their petitions have not shown that they were owners of property, or that they would be injuriously affected by the bill, 2 Saund. & B. 19. 73.

<sup>3</sup> 1 Clif. & Rick. 221; 3 ib. 46.

<sup>4</sup> Smethurst, App. 95; 1 Clif. & Steph. 39; 2 ib. 89; 2 Clif. & Rick. 109. 212.

<sup>5</sup> 1 Saund. & A. 15. The owner of the bed and foreshore of a river, although the right of their user was vested in river



proposed to be taken.<sup>1</sup> A railway company whose property is proposed to be taken has been allowed the same rights of *locus standi* as a private landowner,<sup>2</sup> and standing order No. 132 provides that, *S. O.* 132. in the case of every railway bill which—

“Contains provisions for taking or using any part of the lands, railway, stations or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition *against such provisions or* <sup>3</sup> against the Preamble and Clauses of such Bill.” <sup>4</sup>

Even in the case of an *omnibus* bill, or a bill in which the promoters seek powers for a number of various objects or different undertakings, the general *locus standi* allowed to a petitioner as a landowner has enabled him, however little of his land is taken, to be heard against the whole bill;<sup>5</sup> and in cases where the promoters have desired more particularly to exclude him from being heard on any save certain provisions of a bill, the referees have refused so to limit his *locus standi*.<sup>6</sup> But in 1891, and again in 1903, when granting the usual “landowner’s *locus standi*,” against the whole of a railway (various powers) bill, to a petitioner whose land was taken under a part only of the bill, the court expressly declared that, in doing so, they

commissioners, has been granted a *locus standi* as a landowner; in addition to the commissioners themselves, against a bill for the laying of electric cables, 2 Saund. & A. 184.

<sup>1</sup> 1 Clif. & Rick. 158; Rick. & S. 328-330; Rick. & M. 313; 1 Saund. & B. 67. 104. A landowner’s *locus standi* has been granted to the owners of a ferry proposed to be acquired compulsorily by a local authority, 1 Saund. & B. 29. Where certain rights had been granted by an agreement to coal owners in respect of a water-way, the Court of Referees granted a *locus standi* against alleged interference with those rights and presumed the legality of the agreement, 1 Saund. & B. 121.

<sup>2</sup> London and North Western Railway Bill, 1868, 1 Clif. & Steph. App. 62. 63 (the post case), 3 Clif. & Rick. 481.

<sup>3</sup> The words italicised were not contained in the original standing order, but were inserted in 1871. 126 C. J. 421; and cf. 2 Clif. & Steph. 256.

<sup>4</sup> 2 Clif. & Steph. 256; 1 Clif. & Rick. 7. 19. 206; 3 ib. 136. 201. 301. 367;

Rick. & M. 89. 98. 139 (Cathcart, &c., Railway Bill), 311; Rick. & S. 117. In the following cases a “limited” *locus standi* was allowed; 3 Clif. & Rick. 142. 177. 326. 341; Rick. & M. 252; Rick. & S. 14. 152; 1 Saund. & B. 76.

<sup>5</sup> It has been held that a landowner has a general *locus standi* against an *omnibus* railway bill, however limited his interest, London & North Western Railway Bill, 1868, 1 Clif. & Steph. App. 62. 63 (known as the “post” case); 2 Clif. & Steph. 37; Rick. & S. 117, &c. (petitions of railway companies as landowners); 1 Clif. & Rick. 221; 2 ib. 130; Rick. & S. 67; 2 Saund. & A. 182-3, &c. (petitions of other landowners); and cf. Select Committee on Private Bill Business, Parl. Pap. (H. C.) sess. 1863, pp. 105. 113 (Evidence). A landowner whose land was to be taken has been held to have a general *locus standi* against a general improvement bill, 1 Clif. & Steph. 19 App. 49; 1 Clif. & Rick. 158; 2 ib. 69-70, &c.

<sup>6</sup> 2 Clif. & Rick. 130; 2 Saund. & A. 15. 123. 182. 230, and cf. 2 ib. 73-75; 1 Saund. & B. 127.

did not intend to influence the committee, who would deal with the petitioner's interests as affected by the bill, in judging what might or might not be considered as material.<sup>1</sup> And in 1902, the *locus standi* of a petitioning landowner, a railway company, against an improvement (*omnibus*) bill promoted by an urban district council, was limited to those parts of the bill under which the company's land was taken or their interests affected.<sup>2</sup>

*Locus standi* of landowner against abandonment, extension of time, and revival of powers, bills.

In the case of a bill for the abandonment of a railway not completed within the time for which compulsory powers had been granted, the owner of land upon the lines has not been allowed a *locus standi*<sup>3</sup> except in some cases where it has been shown that he has sustained special damage.<sup>4</sup> Lessees of minerals beneath a line proposed to be abandoned have been refused a *locus standi*.<sup>5</sup>

In the case of a bill for an extension of time,<sup>6</sup> the owners of land authorized by a former Act to be taken, and already contracted for with the company, have been refused a hearing, on the ground that they were merely creditors.<sup>7</sup> But a landowner with whom a company had contracted to restore land not required for the railway, within a certain time, has been allowed a hearing against a clause extending the time for completing the line, so as to enable him to seek the insertion of a special saving clause for his contract;<sup>8</sup> and landowners who had special agreements with a company, or who had received no notice to treat for the purchase of their land under compulsory powers, have obtained their *locus standi* against extension of time.<sup>9</sup>

<sup>1</sup> Rick. & S. 117 (railway company petitioning against an *omnibus* railway bill); 2 Saund. & A. 182 (London County Council, as landowner, against Metropolitan District Railway (Various Powers) Bill); and cf. 1 Clif. & Rick. 47-48; Rick. & S. 330 (Cardiff, &c., Bill).

<sup>2</sup> 2 Saund. & A. 104.

<sup>3</sup> 1 Clif. & Steph. 27; 2 Clif. & Rick. 40; 3 ib. 78. 399. 403.

<sup>4</sup> 1 Clif. & Steph. 28; 2 Clif. & Rick. 231; Rick. & M. 139.

<sup>5</sup> 1 Clif. & Steph. 28-29.

<sup>6</sup> As to the *locus standi* of municipal authorities against extension of time (and other) bills, cf. S. O. 134. 134A. and 134B, *infra*, p. 687, and Rick. & S. 124-6. 227, &c.

<sup>7</sup> Smethurst, App. 110; 1 Clif. & Steph. 31, App. 37; 3 Clif. & Rick. 315; Rick. & M. 133; Rick. & S. 330. Cf. as an exceptional case, Rick. & S. 224.

<sup>8</sup> 1 Clif. & Steph. 29. 32.

<sup>9</sup> 2 Clif. & Rick. 100; Rick. & M. 67. 113; 1 Saund. & A. 1; 1 Saund. & B. 48. Cf., however, Rick. & M. 59. 187; Rick. & S. 330-333. The referees have held that the owner of certain premises, who, having received notice, had engaged other premises and had applied to the Court of Queen's Bench for a *mandamus* to compel the company to complete its contract, had a right to be heard against the clause of a bill which extended the time for completing a railway. A railway company claiming to be heard as an owner of land for which they had received no notice to treat, have been refused a *locus standi* against an extension of time bill; no notice to treat being necessary when an easement only is taken, 2 Saund. & A. 39. The Court of Referees, in disallowing a *locus standi*, has held that in the case of a railway company asking for an extension of

And where a company applied for an extension of time for purchasing land and completing works, and it was shown that nothing had been done for the execution of the line, and that the company were under financial embarrassments, landowners on the line have been allowed a hearing.<sup>1</sup>

In the case of a bill providing, not for an extension of time, but for a revival of the expired powers of a company, a *locus standi* has been allowed to another railway company<sup>2</sup> or a landowner<sup>3</sup> as if the bill were the original bill; but it has been refused in a similar case when, the money for the purchase of his property under the original Act having been paid into court, the petitioner's legal interest in it had passed into the hands of the promoters.<sup>4</sup> On the other hand, the owners of land which was proposed to be taken by a bill but which was subject to compulsory powers of purchase, though not actually taken, by another company, have been held to have a *locus standi*, as not being yet divested of their rights as owners.<sup>5</sup>

The rights of the representatives of a particular trade, business, or interest to be heard against a bill are dealt with in the two following standing orders, Nos. 133 & 133A.

"Where any body of persons corporate or unincorporated sufficiently representing a particular trade, business, or interest, in any district to which any railway bill relates, petition against the bill, alleging that such trade, business, or interest will be injuriously affected by the rates and fares proposed to be authorized by the bill, or is injuriously affected by the rates and fares already authorized by Acts relating to the railway undertaking, it shall be competent to the referees on private bills, if they think fit, to admit the petitioners to be heard, on such allegation, against the bill, or any part thereof, or against the rates and fares authorized by the said Acts, or any of them. The provisions of this Order relative to rates and fares already authorized, extend to traders and freighters, and to a single trader, in any case where a *locus standi* would have been allowed to them or him, if this Order had not been made. Nothing in this Order shall authorize the referees to entertain any question within the jurisdiction of the Railway Commissioners."

"Where any society or association sufficiently representing a trade, business, or interest in any district to which any bill relates, petition against the bill, alleging that such trade, business, or interest will be injuriously affected by the provisions contained therein, it shall be competent to the referees on private

*Locus standi* of bodies representing Trades, &c.; and of Associations.  
S. O. 133.

time for taking an easement only over another company's railway, the *locus standi* is a matter of discretion, 1 Saund. & B. 157.

<sup>1</sup> 1 Clif. & Steph. 28. 34; Rick. & M. 89; and cf. 1 Saund. & A. 261.

<sup>2</sup> Rick. & M. 89; 1 Saund. & B. 114. 157.

<sup>3</sup> 1 Clif. & Steph. 36, App. 35; 1 Saund. & A. 261.

<sup>4</sup> 1 Clif. & Rick. 219-220.

<sup>5</sup> 1 Clif. & Rick. 207.

bills, if they think fit, to admit the petitioners to be heard on such allegations against the bill or any part thereof." <sup>1</sup>

*Locus standi* on the ground of contingent damage.

In accordance with the general principle that, to entitle them to a *locus standi*, petitioners should prove that their property or interests are directly or specially affected by a bill, petitioners whose property was not taken, but who apprehended injury by reason of the contiguity of a railway, have been refused a hearing.<sup>2</sup> In some exceptional cases, however, of special danger, disturbance, or injury, petitioners so affected have been allowed a hearing;<sup>3</sup> and owners and occupiers of houses who complained that their property, although untouched, would be injured or shaken by a proposed line, have been heard and have obtained protective clauses.<sup>4</sup> The owners of property, in proximity to a railway proposed to be worked by electricity, claiming to be heard on the ground of injury from vibration, have in some cases been granted,<sup>5</sup> and in others been refused,<sup>6</sup> a *locus standi*. It has been laid down as a general principle that a landowner or inhabitant cannot claim a *locus standi* on the ground that proposed works will destroy the amenity or salubrity of a place;<sup>7</sup> but in two cases, occurring in 1891, petitioners claiming to be heard upon such grounds were granted a *locus standi*.<sup>8</sup> The

<sup>1</sup> S. O. No. 133 was first passed in 1884, 139 C. J. 349. But amendments, allowing a greater latitude, were made in it in 1903, 158 C. J. 369; and in 1904 the further S. O. No. 133A was passed, 159 C. J. 414. Earlier decisions of the referees had already extended the rights of traders to be heard before a committee, a *locus standi* having been given in some cases to an individual firm, 1 Clif. & Rick. 107. 180. 210; Rick. & M. 184. 236; Rick. & S. 50 (petition of Sharp & Co. against the N. British Ry. Bill, 1890), 316. 346; and cf. 2 Clif. & Rick. 25. For decisions of the referees, prior to 1903, regarding the *locus standi* of steamship owners' associations against bills conferring steamboat powers upon a railway company, cf. 2 Clif. & Steph. 59; 3 Clif. & Rick. 415; Rick. & M. 100. 243; Rick. & S. 115. 199. In 1890, warehousemen in Glasgow, petitioning against the North British, &c., Railway Bill, were refused a *locus standi* by the court, a petition which was also presented by the corporation, and which was not objected to, being held to cover their case. But the question of their right to be heard having been raised in the House upon a

motion for an instruction to the referees, the court reheard the case and granted them a *locus standi* (Rick. & S. 50-53; 373 H. D. 3 s. 1881; and cf. *infra*, p. 696). For decisions of the referees since 1903 on the *locus standi* of petitioners claiming to be heard (1) as Traders, see 2 Saund. & A. 205. 225. 229 (disallowed); (2) as Association, see 2 Saund. & A. 221; 1 Saund. & B. 68. 67. 143. 131. 152; 2 ib. 54 (allowed); 2 Saund. & A. 228, 1 Saund. & B. 42. 116; 2 ib. 3 (disallowed).

<sup>2</sup> Smethurst, 26-28, App. 101. 102. 117; 1 Clif. & Steph. App. 45; 1 Clif. & Rick. 80; 2 ib. 38. 124. 249; 3 ib. 86; Rick. & M. 208; 2 Saund. & A. 123-4. 157; 1 Saund. & B. 2.

<sup>3</sup> 1 Clif. & Steph. 40-44; 2 Clif. & Rick. 2. 14. 75.

<sup>4</sup> 2 Clif. & Steph. 189; 1 Clif. & Rick. 46; Rick. & S. 44; 2 Saund. & A. 90.

<sup>5</sup> 2 Saund. & A. 100. 126. 128.

<sup>6</sup> 2 Saund. & A. 65. 192.

<sup>7</sup> 1 Clif. & Rick. 203; 3 ib. 30. 125; 1 Saund. & A. 264. 330; 2 ib. 157.

<sup>8</sup> Local Government Provisional Order Bill, 1891 (Rick. & S. 127). Manchester, Sheffield and Lincolnshire Railway

owners of glass-works, and the owners of business premises, who apprehended injury from the obstruction of light by proposed works, have also been heard, their case being considered sufficiently exceptional to justify a departure from the general principle of previous decisions,—viz. that landowners can only be heard when their land is actually taken or interfered with.<sup>1</sup> The trustees of a hospital who alleged that, although no land was to be taken by a railway, great injury would arise to the inmates from the noise and vibration of passing trains, have been refused a *locus standi*.<sup>2</sup> The trustees of a church, alleging that the services would be interfered with by the proximity of a railway, have in one case been refused, and in another been allowed, a hearing upon that ground. In both cases they were allowed a *locus standi* on the further ground of obstruction of access.<sup>3</sup> In numerous cases, petitioners complaining of interference with their access to their premises, or to the sea, or other waterside, have been allowed a *locus standi*, although their property was not directly affected.<sup>4</sup> It has been held that the displacement of population, involved by a bill, was not a sufficient ground for allowing a school board to be heard in opposition.<sup>5</sup>

In the case of a consolidation bill, the whole subject being reopened, a petitioner is entitled to be heard against the provisions of the Acts proposed to be consolidated.<sup>6</sup> But where no fresh powers affecting the property of a petitioner are sought by a bill,<sup>7</sup> or where a petitioner is affected, not by the bill, but by the provisions of a former Act,<sup>8</sup> his *locus standi* has been disallowed.

Exceptional cases of *locus standi*.

A telephone company, however, who alleged that the propinquity

(Extension to London) Bill, 1891 (Rick. & S. 130 *et seq.*). In the latter case a *locus standi* was granted to owners, occupiers, &c., whose property was not taken, but who claimed that its amenity would be injured by the proposed line, now known as the Great Central Railway.

<sup>1</sup> 1 Clif. & Rick. 258; and cf. Rick. & S. 213-4; 2 Saund. & A. 235-6.

<sup>2</sup> North British Railway Bill, 1877 (2 Clif. & Rick. 54); London and North Western Railway Bill, 1889 (Rick. & M. 206). The petitioners in this case obtained a *locus standi* and a protective clause before a committee in the House of Lords.

<sup>3</sup> 2 Clif. & Rick. 249; Rick. & S. 139; and cf. 2 Saund. & A. 58. 235-6, and 1

Saund. & B. 148 (*locus standi* disallowed).

<sup>4</sup> 2 Clif. & Rick. 139. 197; 3 ib. 60. 70. 226; Rick. & M. 46. 145; Rick. & S. 20. 23. 137-9. 151-2. 212; and cf. Rick. & M. 92; 2 Saund. & A. 210-12; 1 Saund. & B. 109.

<sup>5</sup> 3 Clif. & Rick. 182. 185. And as to other and later cases where particular grounds, on which petitioners claimed a hearing, were not held to be sufficient for granting a *locus standi*, cf. 2 Saund. & A. 206. 214-16.

<sup>6</sup> 3 Clif. & Rick. 257.

<sup>7</sup> 2 Clif. & Rick. 207; Rick. & M. 26. 70; Rick. & S. 1. 56. 93.

<sup>8</sup> Suppl. to Votes, 1847, ii. 1070. 1113; 3 Clif. & Rick. 28. 58. 96. 98; Rick. & S. 208; 1 Saund. & A. 100; 2 ib. 71. 230.

of an electric tramway (authorized, but not made) would injure their work by induction, and who desired to ask for protective clauses in a bill for the extension of time for its completion, have been granted a *locus standi* on the ground of the change which had taken place in the scientific knowledge and practical application of electricity.<sup>1</sup>

A *locus standi* has been granted to a petitioner, as owner of the soil,<sup>2</sup> who objected to the proposed laying of a conduit pipe. The owners of mineral property have been allowed a *locus standi* as landowners,<sup>3</sup> and have been heard against the provisions of bills relating to tolls.<sup>4</sup> Owners and occupiers of land in reasonable proximity to a canal, which it was proposed to stop up, have been allowed a *locus standi*;<sup>5</sup> and petitioners using a canal for the purposes of traffic have claimed, sometimes successfully,<sup>6</sup> and sometimes unsuccessfully,<sup>7</sup> to be heard against a bill for the purchase of the canal by a railway company. The owner of an equitable interest in land has been heard, where the legal estate was vested in trustees.<sup>8</sup> It has been held that petitioners affected by an underpinning clause

<sup>1</sup> Rick. & S. 102. 167. 242; and Rick. & S. 259; 2 Saund. & A. 34. 77. But cf. also 2 Saund. & A. 62. 86. 98. A railway company, alleging injury to their wires, &c., by induction, have been heard against the proposed use of electrical powers upon tramways owned, or proposed to be purchased, by another company (Rick. & S. 242-5. 256-8). As to decisions on the *locus standi* of gas or water companies who alleged that they were insufficiently protected against damage from the powers sought in a tramways bill, cf. Rick. & S. 262, and 2 Saund. & A. 60. 145 (*locus standi* allowed); 2 Saund. & A. 1-3. 193. 236. 241 (*locus standi* disallowed); and 1 Saund. & A. 108. 282 (*locus standi* limited). See also 1 Saund. & B. 48 for *locus standi* disallowed in case of water company complaining of injury to their mains in a gas bill, and of Metropolitan Water Board in case of a tramways bill, ib. 106, but allowed in case of an electric supply bill, 1 Saund. & B. 115, and to a gas company against parts of a corporation bill authorizing interference with the mains and pipes, 1 Saund. & B. 54, limited *locus standi* allowed to a statutory water company against a bill authorizing a company to use its pipes, &c., 1 Saund. & B. 161,

and to a railway company in case of powers in electric lighting provisional orders to break up streets and lay mains over bridges, which it had to maintain, 2 ib. 8.

<sup>2</sup> 1 Clif. & Steph. 23, & App. 64; 1 Clif. & Rick. 148; 2 ib. 78; 2 Saund. & A. 227; 2 Saund. & B. 5; and cf. 2 Clif. & Steph. 219; 2 Saund. & A. 235-6. A similar *locus* has been granted in the case of the erection of posts and apparatus for a trolley vehicle system; 2 Saund. & B. 59. A gas company have been refused a *locus standi* on the ground that they had not such an interest in the soil occupied by their pipes as to entitle them to be heard generally as landowners, Rick. & S. 325. It has also been held that an easement over public roads for the purpose of laying down pipes for statutory purposes is not such an ownership or occupation as confers the right to a general *locus standi*, 2 Clif. & Steph. 229; and cf. 3 Clif. & Rick. 340.

<sup>3</sup> 1 Clif. & Rick. 221.

<sup>4</sup> Smethurst, App. 120; 2 Clif. & Rick. 34.

<sup>5</sup> 1 Clif. & Rick. 215-6; 3 ib. 55.

<sup>6</sup> 1 Clif. & Steph. App. 66. 126.

<sup>7</sup> 1 Clif. & Rick. 150.

<sup>8</sup> Smethurst, 17; 1 Clif. & Rick. 270.

in an underground railway bill, although their property was outside the limits of deviation, were entitled to be heard.<sup>1</sup>

A corporation who were promoting a bill to complete the purchase of a property have been regarded for the purposes of *locus standi* as its legal owner, and have been heard as such against a bill which empowered a county council to purchase part of the property.<sup>2</sup> And a railway company have been granted a limited *locus standi* against a bill authorizing another company to take lands which the petitioners had scheduled for the purposes of a bill that they themselves were promoting.<sup>3</sup> The lessees of a colliery have been heard against clauses, in a bill promoted by a corporation, authorizing an enlargement of a reservoir which, they alleged, would be a source of increased danger to life and property in their collieries.<sup>4</sup> In the case of bills for constructing sewage works, a *locus standi* has been granted to owners in proximity to the proposed site, although their property was not within the limits entitling them to receive the notice necessary, with regard to such bills, under standing order No. 15.<sup>5</sup> In all such exceptional cases, the referees determine—according to the circumstances, which necessarily vary in each instance—whether petitioners have such an interest as to entitle them to be heard; or to what extent, and with what restrictions, they may claim a hearing.

In numerous cases, coming before the referees prior to 1902, of bills which affected river or other waters, a *locus standi* had already been given to millowners, the working of whose mills would be affected by works proposed to be constructed above or below them; and to riparian and other owners entitled to the use of river waters. And the right of owners of surface waters to be heard as landowners has long been established.<sup>8</sup>

In the case of a proposed abstraction of underground water by a waterworks bill, the general rule has been not to allow a *locus standi*

<sup>1</sup> 2 Clif. & Rick. 193; 3 ib. 156; 144. Rick. & S. 45.

<sup>2</sup> 2 Saund. & A. 55 (Petition of Corporation of London against London County Council (General Powers) Bill, 1901). A railway company have been refused a *locus standi* as a landowner, against another company's bill, in respect of land which the petitioners had completed the arrangements for purchasing, on the ground that they had not actually entered into possession, 2 Saund. & A.

<sup>3</sup> 1 Saund. & A. 176. And cf. 2 ib. 91; 2 Clif. & Steph. 242.

<sup>4</sup> Rick. & S. 320.

<sup>5</sup> 1 Saund. & A. 116; 2 ib. 16. 117.

<sup>6</sup> 2 Clif. & Steph. 50. 53; 1 Clif. & Rick. 3; 3 ib. 111; Rick. & M. 195; 1 Saund. & A. 334; and cf. also S. O. No. 14.

<sup>7</sup> 2 Clif. & Rick. 212; 3 ib. 477; 2 Saund. & A. 31, etc.

<sup>8</sup> 1 Clif. & Steph. 24, &c.

to petitioners whose water supply might be affected,<sup>1</sup> unless evidence was forthcoming to prove that the underground water flowed in a well-defined channel.<sup>2</sup>

S.O. 134D. By standing order No. 134D, which was passed in 1902, it is now provided that

"Where any owner, lessee, or occupier, or where any conservancy or other authority charged with the control of river or other waters, petitions against a bill alleging that under its provisions any water or water supply of which they may legally avail themselves will be diminished or injuriously affected, it shall be competent to the referees on private bills, if they think fit, to admit the petitioners to be heard against the bill or any part thereof."<sup>3</sup>

*Locus  
standi  
against  
amalgama-  
tion  
bills.*

In the case of amalgamation bills a larger latitude than usual is generally allowed to opponents.<sup>4</sup> The general ground upon which petitioners have been admitted to oppose amalgamation bills is that the amalgamation itself will injuriously affect them, and not that they can show any grievance resulting from past legislation.<sup>5</sup>

Numerous questions have arisen in regard to the *locus standi* of railway companies in opposing bills for the amalgamation of other companies;<sup>6</sup> and such *locus standi* has been admitted<sup>7</sup> or refused,<sup>8</sup> according to the degree in which the interests of the opposing companies have been affected.

The *locus standi* of petitioners against bills for the amalgamation of canal companies, of dock companies, of canal with dock companies, of canal or dock companies with railway companies, of tramway companies, of gas companies, and of water companies, has also been dealt with by the referees.<sup>9</sup>

*Locus  
standi*

It was formerly held, as a parliamentary rule, that competition

<sup>1</sup> *Chasemore v. Richards*, 7 H. L. Cas. 349; and 2 Clif. & Steph. 199; 3 Clif. & Rick. 239; Rick. & M. 95; 1 Saund. & A. 134.

<sup>2</sup> 3 Clif. & Rick. 179. 385. 477; 1 Saund. & A. 252.

<sup>3</sup> *Locus standi* allowed, 2 Saund. & A. 79. 80. 88. 177; 1 Saund. & B. 8. 51. 169; 2 ib. 64. 73. Limited *locus standi* allowed, 2 Saund. & A. 162; 2 Saund. & B. 83. *Locus standi* disallowed, 2 Saund. & A. 205. 207. 227; 1 Saund. & B. 160.

<sup>4</sup> 1 Clif. & Rick. 240; 2 Saund. & A. 116.

<sup>5</sup> 1 Clif. & Rick. 77. Cf. also, 1 Clif. & Rick. 240-247; 3 ib. 58. 97. 404; Rick. & S. 240. 334; 1 Saund. & A. 90. 173; 2 ib. 113. 139.

<sup>6</sup> *Vide* Report of joint committee of Lords and Commons, of 1872, on Railway Amalgamation.

<sup>7</sup> *Smethurst*, App. 163; 1 Clif. & Steph. App. 100; 2 Clif. & Rick. 172. 243; 3 ib. 143. 145. 306; Rick. & M. 177; Rick. & S. 334; 1 Saund. & A. 31. <sup>8</sup> *Smethurst*, App. 136. 138; 1 Clif. & Steph. App. 101; 2 Clif. & Rick. 36-103. 299; 3 ib. 57. 58. 88. 107. 404; Rick. & M. 255; 1 Saund. & A. 173.

<sup>9</sup> 1 Clif. & Rick. 73 (canal); 3 ib. 15. 319 (docks); 1 ib. 28. 112; Rick. & S. 217; 1 Saund. & A. 145 (docks and railway); 2 Clif. & Steph. 218; 1 Clif. & Rick. 141 (gas); 3 ib. 38 (tramways); 1 ib. 59; 2 ib. 307 (water).



did not confer a *locus standi*: but in course of time this rule was considerably relaxed, and numerous exceptions were, in practice, admitted; and under standing order No. 129, originally passed in 1853, petitioners have generally been admitted to be heard against a bill on the ground of competition, the referees, in the exercise of their discretion under this standing order, allowing<sup>1</sup> or refusing<sup>2</sup> a *locus standi*, according to their opinion of the extent and directness of the competition in respect of which the petitioners claim to be heard.<sup>3</sup> In cases where it was only proposed to improve an existing competition, a *locus standi* has not been allowed.<sup>4</sup>

In the case of a bill authorizing a railway company to own and run steamboats,<sup>5</sup> the claim of steamship owners' associations to a

<sup>1</sup> *Locus standi* allowed: To railway companies, dock owners, &c., against railway, dock, &c., bills, 3 Clif. & Rick. 371; Rick. & M. 87; 2 Saund. & A. 52. 224; 1 Saund. & B. 24. 26. 27. 39. 76. 81. 82. 83. 86; 2 ib. 23. 49; and (limited), ib. 57. 123. 145. 148. To steamboat owner against a railway bill, 2 Saund. & A. 107. To corporation owning tramways against railway bill seeking power to run omnibuses, 1 Saund. & B. 38. To promoters of a new tramway against a link in existing lines affecting the proposed line, 1 Saund. & B. 138. To steam tramway companies, &c., against railway bills, 3 Clif. & Rick. 285. 471. To railway companies against tramways, steam tramways, or electric tramways bills, 2 Saund. & A. 57; 3 Clif. & Rick. 455; 1 Saund. & A. 242; 2 ib. 23. 118. 245. To omnibus companies against tramways bills, 1 Clif. & Steph. App. 120; 2 ib. 89; 2 Saund. & A. 19; 1 Saund. & B. 73. To owners of a bridge or pier against bills authorizing another bridge or pier, Rick. & S. 23; 2 Saund. & A. 5. 249. To gas, &c., companies, 2 Clif. & Steph. 100; 1 Clif. & Rick. 50; 2 ib. 229; 3 ib. 109. 383; 1 Saund. & B. 18. 20. 49. 71. 89. 98; 2 ib. 67. 91; and (limited) 2 Saund. & A. 249; 1 Saund. & B. 129; 2 ib. 78. And to other petitioners, 1 Saund. & A. 170. 202. 298; 2 ib. 81. 177. 201. 210; 1 Saund. & B. 68. 202; 2 ib. 57. 86. See also 1 Saund. & B. 35. 38, where a *locus standi* was given to petitioners on account of the novel character of the scheme proposed. Limited *locus standi* allowed, 1 Saund. & B. 47.

<sup>2</sup> *Locus standi* disallowed: To railway

companies against railway or dock bills, 2 Saund. & A. 160; 3 Clif. & Rick. 373, &c.; 1 Saund. & B. 92. 150. And against tramways or electric tramways bills, 2 Clif. & Steph. 142; 1 Clif. & Rick. 13; 2 Saund. & A. 149; and Rick. & S. 242; 1 Saund. & A. 157. 322. To electric railway company against power to run omnibuses in a railway company's bill, 1 Saund. & B. 24. To hotel keepers, 3 Clif. & Rick. 23, and to railway-carriage makers, 2 Clif. & Rick. 50, against powers sought in a railway company's bill. To cab proprietors against a tramways bill, 2 Clif. & Rick. 323. To owners of a bridge, 2 Clif. & Rick. 89; Rick. & S. 36; 1 Saund. & A. 195. To gas or water companies, 1 Saund. & A. 46; 2 Saund. & A. 38. 194; 1 ib. 129. To a corporation supplying gas, 1 Saund. & B. 162. To electric supply companies, 2 Saund. & A. 181. 189. 200. 226; 1 Saund. & B. 15; 2 ib. 104. And to other petitioners, 3 Clif. & Rick. 131; 1 Saund. & A. 250; 2 ib. 29. 169. 233; 1 Saund. & B. 103.

<sup>3</sup> It has been held that the promoters of a *bond fide* application to a government department for a provisional order shall be entitled to a *locus standi* against a bill for a competing scheme, conditionally only on the application not being actually rejected before the hearing of the bill in committee, 1 Clif. & Rick. 234. 235; 3 ib. 100. 114; and cf. 1 Saund. & A. 301; 2 ib. 248; 1 Saund. & B. 55.

<sup>4</sup> 2 Clif. & Rick. 133. 279; 3 ib. 225. 357. 378; Rick. & M. 118. 197; Rick. & S. 243; 2 Saund. & A. 150.

<sup>5</sup> Cf. *supra*, p. 680, note 1.

*locus standi* has frequently been considered by the referees; <sup>1</sup> and a *locus standi* against such a bill has been granted, on the ground of competition, to other railway companies,<sup>2</sup> to dock companies,<sup>3</sup> to steam-packet companies,<sup>4</sup> and to merchants or ship-owners trading to ports affected, but has been refused <sup>5</sup> where the interests of such petitioners were not considered to be sufficiently affected to entitle them to be heard on this ground.<sup>6</sup>

*Locus standi* against "running powers" provisions.

The *locus standi* of a railway company over whose line another company proposes to take running powers is secured by standing order No. 132, already alluded to (see p. 677). But a railway company enjoying running powers over another line has been refused a *locus standi* against the concession of similar powers to a third company,<sup>7</sup> except in some special cases; <sup>8</sup> and in cases where it has been alleged that this concession was for the purposes of amalgamation or for competition, such *locus standi* has been granted <sup>9</sup> or refused <sup>10</sup> according to the extent to which the *status* of the petitioners was to be altered. A railway company having running powers over two railways belonging to another company has been refused a *locus standi* against a bill promoted by an independent company to connect these two railways.<sup>11</sup>

*Locus standi* of "frontagers" against a tramway bill.

S. O. 135.

In the case of a tramways bill, the *locus standi* of the petitioners familiarly known as "frontagers" is dealt with by standing order No. 135. The first portion of this order provides that—

"The owner, *lessee*, or occupier of any house, shop, or warehouse in any street or road through which it is proposed to construct any tramway, and who alleges in any petition against a private bill or provisional order that the construction or use of the tramway proposed to be authorized thereby will injuriously affect him in the use or enjoyment of his premises, or in the conduct of his trade or business, shall be entitled to be heard on such allegations before any select committee to which such private bill, or the bill relating to such provisional order, is referred." <sup>12</sup>

<sup>1</sup> Cf. standing order No. 156 (*infra*, p. 704), as to the acquisition by railway companies of steam vessels and docks, &c.

<sup>2</sup> 1 Saund. & A. 229; 2 ib. 135; 1 Saund. & B. 150.

<sup>3</sup> Rick. & M. 270; 1 Saund. & B. 39.

<sup>4</sup> Rick. & S. 197; 2 Saund. & A. 107; and cf. Rick. & M. 100.

<sup>5</sup> Rick. & M. 241-2. 251. 270; and cf. Rick. & S. 346; 2 Saund. & A. 25. 216-221. 223.

<sup>6</sup> Rick. & M. 241. 270; Rick. & S. 111; 2 Saund. & A. 109. 115. 174.

<sup>7</sup> Smethurst, 56, *et seq.*; 1 Clif. & Rick. 172; 3 ib. 267. 299 (Eastbourne Railway Bill); Rick. & S. 3; and cf. also 1 Saund. & A. 90.

<sup>8</sup> 1 Clif. & Rick. 78. 96; Rick. & M. 62.

<sup>9</sup> 1 Clif. & Steph. App. 102; 1 Clif. & Rick. 173; 2 ib. 243.

<sup>10</sup> 2 Clif. & Rick. 103. 245, 3 ib. 57. 88. 89. 267.

<sup>11</sup> 2 Saund. & B. 12.

<sup>12</sup> As originally passed in 1870 (125 C. J. 221), this standing order consisted only of the above provision, in the form in which

In 1903 a second and important provision was added to this standing order,<sup>1</sup> empowering the referees—

“To admit the petitioners, being the owners, lessees, or occupiers of any house, shop, or warehouse having its access materially dependent on such street or road, and making the aforesaid allegations, to be heard against the bill, if they think fit.”<sup>2</sup>

In addition to the discretion vested in the referees by this concluding portion of standing order No. 135, and by standing orders Nos. 133, 133A, and 134D already alluded to, further discretionary powers regarding the *locus standi* of petitioners are conferred on the Court by the three following standing orders.

Standing order No. 134, provides that—

“It shall be competent to the referees on private bills to admit the petitioners, *Locus standi* of being the municipal or other authority having the local management of the metropolis, or of any town or district,<sup>3</sup> or the inhabitants of any town or district<sup>4</sup> alleged to be injuriously affected<sup>5</sup> by a bill, to be heard against such bill, if they shall think fit.”

In the case of a petition from the inhabitants of a town, it should be shown that they fairly represent the general body of inhabitants;<sup>6</sup> and numerous decisions of the referees have established the general grounds upon which such bodies are entitled to be heard. But the cases arising under this standing order have varied so much in their circumstances, that no analysis of them would be adequate for the practical guidance of parties.<sup>7</sup>

it is quoted with the exception of the word “lessee,” which was inserted in 1886 (141 C. J. 281), and of the words “or road,” which were inserted in 1903; and in numerous cases the claim of petitioners to be heard under the order as it existed up till 1903 had been admitted or refused by the referees. (Cf. Rick. & S. 310; 1 Saund. & A. 297. 303; 2 ib. 57. 84. 120. 158, &c.)

<sup>1</sup> 150 C. J. 383.

<sup>2</sup> 2 Saund. & A. 237.

<sup>3</sup> In 1902, the conservators of a common, claiming to be heard under this provision, against the construction of tramways along a road adjoining the common, were refused a *locus standi*, 2 Saund. & A. 124.

<sup>4</sup> Cf. 1 Saund. & A. 264-5.

<sup>5</sup> The words “injuriously affected,” apply to the whole standing order, 2 Saund. & B. at p. 51.

<sup>6</sup> 2 Clif. & Rick. 78; 3 ib. 382. 442; Rick. & M. 110; Rick. & S. 72. 222; 1 Saund. & A. 312.

<sup>7</sup> 1 Clif. & Steph. 84, *et seq.* And cf. Rick. & S. 60; 1 Saund. & A. 326; 2 ib. 11. 239. 240. 242. 251. In the following cases a *locus standi* was allowed: Rick. & S. 227. 337 (extension of time bills); Rick. & S. 34. 237. 327; 1 Saund. & A. 9. 47. 154. 273. 334; 2 ib. 119; 1 Saund. & B. 6. 8. 9. 27. 31. 44. 50. 100. 101; 2 ib. 1. 26. 46. 61. 73. 86. 94. 97. To road authorities of adjoining districts, against clause in bill authorizing corporation to run omnibuses outside the borough, 1 Saund. & B. 13. Limited *locus standi* allowed, 1 Saund. & B. 42. 84; 2 ib. 27. 43. *Locus standi* disallowed: 1 Saund. & A. 216. 328. 329; 2 ib. 33. 110. 130. 141. 144. 165. 177. 181. 213. 223. 225. 234-5; 1 Saund. & B. 23. 63. 75; 2 ib. 16. 37. 50. 63. 71. 89; in the case of extension of time

Under standing order No. 134E, it is competent to the referees—if they think fit—

*Locus standi* of conservators of forests, commons, &c.

“To admit the petitioners, being the conservators, constituted under Act of Parliament, or under a scheme or an order of the Board of Agriculture, having the control, regulation, or management of any forest, common, or open space alleged to be injuriously affected by a bill, to be heard against such bill.”

And under standing order No. 134B, it is competent to them—

S.O. 134E.

*Locus standi* of county councils.

S.O. 134B.

“To admit the petitioners, being the council of any administrative county or county borough, or being a joint committee of councils of administrative counties or county boroughs the whole or any part of which is alleged to be injuriously affected by a bill, to be heard against such bill if they think fit.”<sup>1</sup>

The four following standing orders, on the other hand—like the first part of standing order No. 135—are of a mandatory nature, and the referees’ discretion under these orders consists in deciding whether the circumstances of a petitioner are, or are not, such as to entitle him to the benefit of their provisions.

By standing order No. 134c:—

*Locus standi* of a county council against a water or a tramway bill.

S.O. 134c.

“The council of any administrative county alleging in their petition that such administrative county, or any part thereof, may be injuriously affected (A) by the provisions of any bill relating to the water supply of any town or district, whether situate within or without such county, or (B) by the provisions of any bill proposing to authorize the construction or reconstruction of any tramway along any main road, or along any other road to the maintenance and repair of which the county council contributes, within the administrative county, shall be entitled to be heard against such bill.”<sup>2</sup>

bills, 1 Saund. & B. 33. 107; 2 ib. 17. 100. 101; and cf. 2 Saund. & A. 241; and 136 Parl. Deb. 4 s. 92–106 (petition of J. Taylor against Maidenhead Bridge Bill, 1904). Inhabitants whose right to be heard was objected to on the ground that they were represented by the local authority, have been granted a *locus standi*, 2 Clif. & Rick. 47. 52; 1 Saund. & A. 254; 1 Saund. & B. 140. In some cases, however, where a local authority has also petitioned against a bill, a *locus standi* has been refused to inhabitants if they were not of a representative character, Rick. & S. 72; 2 Saund. & A. 64, or if the points they urged were similar to those urged in the local authority’s petition, 2 Clif. & Steph. 5. Cf. however *infra* as to the case of consumers of gas or water. It has been held that standing order 134 does not apply to the case of a parish council, 1 Saund. & A. 224, or a rural district council, 2 Saund. & B. 37.

<sup>1</sup> *Locus standi* allowed: Rick. & S. 202. 237–240; 1 Saund. & A. 72. 270–1; 2 ib. 9. 252 (extension of time bills); 1 Saund. & B. 21. 27. 95. 101; 2 ib. 35. 46. 161. 200–1. *Locus standi* disallowed: Rick. & S. 231; 2 Saund. & A. 154. 197. 209. 234–5; and ib. 46 and 53, and 1 Saund. & B. 64 (West Riding Rivers Board claiming to be heard under this standing order), 1 Saund. & B. 61; 2 ib. 33. 71. *Locus standi* limited: 2 Saund. & A. 130. 139; 1 Saund. & B. 17; 2 ib. 41. 43. Where a county council was opposing a bill for the extension of the boundaries of a borough within its area, a *locus standi* was refused to the justices of the county, 2 Saund. & B. 66.

<sup>2</sup> *Locus standi* allowed: 2 Saund. & A. 47; 1 Saund. & B. 44 (against water-works bill); 2 Saund. & A. 63; 2 Saund. & B. 35. 100 (against tramways bills). *Locus standi* disallowed: 2 Saund. & A. 46 & 53 (West Riding Rivers Board

By standing order No. 134A—

"The municipal or other local authority of any town or district alleging in their petition that such town or district may be injuriously affected by the provisions of any bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such bill."<sup>1</sup>

*Locus standi* against lighting and water bills (a) of local authorities (S. O. 134A); and (b) of consumers of gas and water.

In many cases, consumers of gas and water have been admitted to oppose gas and water bills affecting their area of supply,<sup>2</sup> and in deciding such cases the court will have regard to the volume of interest concerned.<sup>3</sup> But where the petitioners were only affected in common with other ratepayers, they have not been allowed a *locus standi*.<sup>4</sup> And a *locus standi* has also been refused to residents in a new district which it was proposed to supply with gas, on the ground that they were not compelled to use the gas to be supplied or restrained from manufacturing their own.<sup>5</sup>

A ground of objection that has frequently been taken to the *locus standi* of petitioners is that they are shareholders or members of some corporate body by whom the bill is promoted, and that, being legally bound by the acts of the majority, they are precluded from being heard as individual petitioners.<sup>6</sup> With very few exceptions,<sup>7</sup>

*Locus standi* of shareholders.

petitioning against waterworks bill). *Locus standi* limited: 1 Saund. & A. 85-90; 2 ib. 164-5. This standing order has been held to include the case of a borough, which, under sect. 31 of the Local Government Act, 1888, is for the purposes of that Act an administrative county in itself, 2 Saund. & A. 96. Cf. also, for interpretations of this standing order, 1 Saund. & A. 68-70; 2 ib. 79-80.

<sup>1</sup> *Locus standi* allowed: 3 Clif. & Rick. 257; Rick. & S. 169; 2 Saund. & A. 106. 112; 1 Saund. & B. 111. 134. 145; 2 ib. 14. 61. *Locus standi* disallowed: 1 Saund. & A. 289. 304-6. 328; 2 ib. 154. 243; and 2 ib. 46. 53 (petition of West Riding Rivers Board); 2 Saund. & B. 16. 42. 63. This standing order has been held not to include the case of a parish council, 1 Saund. & A. 224-6. Cf. also for interpretations of this standing order, Rick. & S. 125-7; 2 Saund. & A. 106.

<sup>2</sup> 1 Clif. & Rick. 16. 51. 135. 141. 143. 213; 2 ib. 9. 10; 3 ib. 40. 118; Rick. & M. 12 (water), 137. 191 (gas); Rick. & S. 53; 1 Saund. & A. 254; 2 Saund. & B. 19. 52. 65. 84. A landowner has been granted a *locus standi* against a bill trans-

ferring the supply of water from a corporation to a new company, 1 Saund. & B. 118.

<sup>3</sup> 2 Saund. & B. 19. 65. See also ib. 76.

<sup>4</sup> 1 Clif. & Rick. 144.

<sup>5</sup> 1 Clif. & Rick. 267; 2 ib. 78.

<sup>6</sup> This objection was argued at great length in the case of the Birmingham and Oxford Junction Railway Bill, in 1847, when the committee decided that shareholders in the company were not entitled to be heard. Again, in the London, Brighton, and South Coast Railway Bill, in 1848, it was determined "that the general rule, that in the case of a joint-stock company the decision of the majority is binding on the minority, ought to be observed, and that the minority of the shareholders in this case had no *locus standi* before the committee."

<sup>7</sup> Manchester Cemetery Bill, 1848, Minutes of Committee, p. 136; South Yorkshire Railway and River Dunn Bill, 1852, Suppl. to Votes, 1852, p. 298; North British Railway Bill, 1853, Suppl. to Votes, 1853, p. 716, &c.

indeed, it has been the rule, in the Commons, not to allow shareholders to be heard in opposition,<sup>1</sup> unless they had an interest different from that of the general body of shareholders.<sup>2</sup> And in 1853, the house declared by a standing order (now No. 130) that—

*S. O. 130.* “Where a bill is promoted by an incorporated company, shareholders of such company shall not be entitled to be heard before the committee against such bill, unless their interests, as affected thereby, shall be distinct from the general interests of such company”<sup>3</sup>

The decisions of the referees have consequently been founded, in cases of this kind, upon the nature of the petitioners' interest, and the manner in which it is affected by the provisions of the bill.<sup>4</sup>

*Locus standi of preference shareholders.*

The proprietor of preference shares has a special interest, which is often distinct from or opposed to that of the general body of shareholders, and his *locus standi* has regularly been allowed,<sup>5</sup> unless it has appeared that his special interest is not such as to entitle him to be heard.<sup>6</sup>

And the *locus standi* of petitioners who have dissented at a “cliff” meeting (cf. *supra*, p. 640, and *infra*, pp. 744, 749) is secured by the following standing order, No. 131, which was passed in 1876—

*Locus standi of proprietors, shareholders, &c., dissenting at a*

“In case any proprietor, shareholder, or member of or in any company, society, association, or co-partnership, shall, by himself or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of standing orders 62 to 66, or at any meeting called in pursuance of any similar standing order of the House of Lords, such proprietor, shareholder, or member shall be permitted to be heard by the committee on the bill on a petition

<sup>1</sup> Suppl. to Votes, 1840, pp. 41. 43. 75. 182.

<sup>2</sup> Suppl. to Votes, 1847, ii. pp. 1110. 1254; 1848, pp. 309. 398; 1850, pp. 72. 75; 1851, pp. 111. 115. 300. 371; 1852, p. 298; 1853, p. 1013. In 1856 the holders of “creditors' stock” were refused a hearing against the Eastern Union Railway Bill, Suppl. to Votes, 1856, i. p. 55.

<sup>3</sup> 3 Clif. & Rick. 77.

<sup>4</sup> In 1867 the referees decided that the Great Eastern Railway Company were not entitled to be heard against the Tending Hundred Railway Bill, on the ground that they were holders of shares in a portion of the company's capital, and that they failed to establish an interest distinct from that of the general body of the shareholders, 1 Clif. & Steph. App. 8; Rick. & M. 181. In 1890 a holder of

Lloyd's bonds was heard against a railway bill by which his security was affected, Rick. & S. 28; and cf. ib. 264. Cf. also 1 Clif. & Steph. App. 103; 1 Clif. & Rick. 43. 51. 89. 102; 2 ib. 101. 169. 273; 3 ib. 91; Rick. & M. 3. 155. 162. 225.

<sup>5</sup> South Eastern (Power to discontinue interest, &c.) Bill, 1850, Suppl. to Votes, 1850, pp. 165. 195; South Devon Railway Bill, 1850, ib. p. 33; Shropshire Union, &c., Bill, 1850, ib. pp. 72. 73; York, Newcastle, and Berwick, &c., Bill, 1850, ib. p. 102; 1 Clif. & Rick. 167; 2 ib. 169; 3 ib. 77. In 1872 a limited *locus standi* was granted to preference shareholders against the capital clauses of a bill and against so much of the preamble as related thereto, 1 Clif. & Steph. App. 163; 2 ib. 257-8.

<sup>6</sup> Suppl. to Votes, 1855, p. 259.

presented to the house, such petition having been duly deposited in the Private Bill Office." <sup>1</sup> "Wharnccliffe" meeting. S. O. 131.

For many years prior to its adoption by the Commons, a similar rule prevailed in the Lords; and shareholders who had dissented from the bill at the meeting called in pursuance of the Wharnccliffe order were expressly permitted to be heard, and were even heard without such dissent.

Closely akin to the case of shareholders is the case of petitioners who—in the capacity in which they petition—may be held to be represented by a local authority or other body. Ratepayers, for example, have not been allowed to be heard, as such, against a bill promoted by a corporation,<sup>2</sup> or other local authority,<sup>3</sup> of which they are electors. And in 1872 a *locus standi* against the Metropolitan Street Improvements Bill was similarly refused to various vestries and public bodies, on the ground that their interests, although various, were represented by the superior body (the Metropolitan Board of Works) by whom the bill was promoted.<sup>4</sup> In the case of a bill promoted by a general body of trustees, permission to be heard in opposition has been refused to individual trustees,<sup>5</sup> and to individuals forming part of a body represented by the trustees;<sup>6</sup> and it has been held that a single member of a harbour commission could not be heard, as a commissioner, against a bill that had been approved by the general body.<sup>7</sup> On the other hand, owners who petition against a bill promoted by a corporation<sup>8</sup> or local

<sup>1</sup> 3 Clif. & Rick. 446; Rick. & M. 52. 199; Rick. & S. 26; 1 Saund. & A. 340. It has been held that shareholders who dissented at a Wharnccliffe meeting were not entitled to be heard when the meeting, though held, had been unnecessary under the standing orders (Committee on Redditch Railway, &c., Bill, 1862; and Rick. & M. 259).

<sup>2</sup> 1 Clif. & Rick. 211; 3 ib. 376. 377; Rick. & M. 74; Rick. & S. 287; 1 Saund. & A. 316; 2 ib. 126. 243-5; 1 Saund. & B. 58.

<sup>3</sup> 2 Clif. & Steph. 97. 265; 1 Clif. & Rick. 196; 2 ib. 9; 1 Saund. & A. 129; 2 ib. 41.

<sup>4</sup> 2 Clif. & Steph. 265. In 1857 the Vestry of St. George's, Hanover Square, and in 1865 the Vestry of Bermondsey, on the same ground, had not been allowed to be heard, respectively, against the Finsbury Park Bill, 1857, and the Whitechapel,

&c., Improvement Bill, 1865, which were promoted by the Metropolitan Board of Works, Smethurst, App. 187; and cf. also 1 Clif. & Steph. App. 155.

<sup>5</sup> Committee on Queensferry Passage Bill, 1848.

<sup>6</sup> Committee on Mersey Docks and Harbour (New Works) Bill, 1858.

<sup>7</sup> Rick. & M. 288-9. In 1901, individual freemen of the Watermen and Lightermen's Company, petitioning against the Thames Piers and River Service Bill, were refused a *locus standi*, although the governing body of the company—by whom, it was contended, they were represented—had not petitioned, 2 Saund. & A. 82.

<sup>8</sup> 2 Clif. & Steph. 121; 1 Clif. & Rick. 211. 229; 2 ib. 149. 233; Rick. & M. 76-78; Rick. & S. 349; 2 Saund. & A. 175. 1 Saund. & B. 142; 2 ib. 30 (limited), 69.



authority,<sup>1</sup> and imposing upon their property a new liability to rates,<sup>2</sup> have been granted a *locus standi*, having special interests which are not considered to be represented by the promoting body.<sup>3</sup> In the case of a bill opposed by a rural sanitary authority, not only owners but ratepayers within the district have been heard in opposition, as well as the authority itself, their interests being considered sufficiently distinct to entitle them to a separate hearing.<sup>4</sup> And in 1904 a *locus standi* was granted to two railway companies who claimed to be heard as ratepayers against the Wolverhampton Corporation on the grounds that, being affected differently from other ratepayers, they desired to ask for differential rating, and that by the Borough Funds Act, 1893, they were debarred from voting in the election of the corporation.<sup>5</sup>

In 1897 the rating authorities of two parishes were granted a *locus standi*, limited to the question of rating, against a railway bill, in addition to the superior authority of the larger district of which these parishes formed a part.<sup>6</sup> And in the case of an amalgamation bill,<sup>7</sup> the South London Gas Bill of 1872, it was decided that vestries, district boards and individual consumers were entitled to be heard in addition to the Metropolitan Board of Works against the bill.<sup>8</sup>

*Locus  
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A petitioner who has not opposed a bill in the other house is not precluded from being heard upon his petition in the House of Commons: <sup>9</sup> but the *locus standi* of petitioners has been disallowed, where they have consented, in the other house, to protective clauses.<sup>10</sup>

<sup>1</sup> 1 Clif. & Rick. 196, and cf. Rick. & S. 276-278; 1 Saund. & A. 39. 139; 2 ib. 72; 1 Saund. & B. 77.

<sup>2</sup> The *locus standi* thus given to an owner has also been given to the leaseholder (for a substantial term of years) of property rendered liable to increased taxation, Rick. & S. 349-353.

<sup>3</sup> In the case of the Ilkley Local Board Bill of 1871, however, the referees determined that certain petitioners, being owners of property and ratepayers, could not be heard against the bill, being represented by the Board by whom the bill was promoted, 2 Clif. & Steph. 97. Cf. also 3 Clif. & Rick. 376-8; Rick. & M. 74; Rick. & S. 276; 2 Saund. & A. 153; 1 Saund. & B. 3. 65. 142; 2 ib. 30. 84.

<sup>4</sup> 2 Clif. & Rick. 47; Rick. & M. 77. But cf. 2 Saund. & A. 228-9.

<sup>5</sup> 2 Saund. & A. 254. See also 2

Saund. & B. 76. But cf. 1 Saund. & B. 1. 54. 129.

<sup>6</sup> 1 Saund. & A. 222. Cf. also 2 Saund. & A. 117-12.

<sup>7</sup> Cf. *supra*, p. 684 (amalgamation bills).

<sup>8</sup> 2 Clif. & Steph. 220.

<sup>9</sup> Smethurst, App. 162.

<sup>10</sup> Smethurst, App. 95; 2 Clif. & Rick. 27; Rick. & S. 39; 2 Saund. & A. 85. Petitioners, having tendered a clause in the House of Lords, which was rejected by the committee, and then accepted two other clauses, with alterations suggested by them, were held not to be precluded from a hearing before the committee of the Commons, as the clauses they had accepted were of minor importance, and had only been acquiesced in conditionally upon the acceptance of their own clause, which had been rejected, 1 Clif. & Rick. 275.



So, if the parties agree to abide by the decision of the committee in one house, they will not be heard in the other: but it is otherwise, if they have not so agreed; <sup>1</sup> and by standing order No. 143 of the S. O. 143. Commons, which was passed in 1888,<sup>2</sup> it is expressly provided that—

“A petitioner against a bill originating in the House of Lords who has discussed clauses in that house shall not on that account be precluded from opposing the preamble of the bill in this house.”

Parties are occasionally precluded from opposing a bill by some special circumstance, such, for example, as an undertaking to this effect with the promoters. In 1892, petitioners who had been precluded—under an agreement with its promoters, embodied in an Act of Parliament—from opposing a bill, which was first introduced in the Lords, were granted a *locus standi* against it in the Commons, it having been so materially amended by the Lords' committee that, as brought down to the second house, it was no longer the bill which the petitioners were bound not to oppose.<sup>3</sup>

An objection which *inter alia* has sometimes been taken to the *locus standi* of a petitioner is, that the allegations of his petition are not sufficiently specific; <sup>4</sup> but the referees have rarely refused a *locus standi* for this reason alone,<sup>5</sup> and, as already pointed out (see p. 673), standing order No. 127 expressly enables the committee on a bill to allow a petitioner to give in a more specific statement of the grounds of his opposition.

Another objection that has frequently been taken to the *locus standi* of petitioners is that their petition is informal, according to the rules and orders of the house applicable to petitions generally (see Chap. XXII.), or as specially applicable to petitions against private bills. In the case of the Worcester New Gas Bill, 1848, a petition was not received, as not having been legally sanctioned by the commissioners, whose petition it purported to be. In 1857, on the East Somerset Railway Bill, the committee refused to entertain a petition signed by one trustee of a turnpike road, the Act requiring three signatures; and in 1866, the referees applied the same rule

*Locus standi* (a) where petition is not specific;

S. O. 127;

or (b) where petitions are objected to as informal, &c.

<sup>1</sup> Whitehaven, Cleator, &c., Railway Bill, 1875; 1 Clif. & Rick. 200.

<sup>2</sup> 143 C. J. 449.

<sup>3</sup> Rick. & S. 231-2.

<sup>4</sup> Suppl. to Votes, 1848, p. 322; 1849, p. 173; 1851, pp. 103. 108. 109. 110; Minutes of Committees, 1857, ii. p. 707; ib. 1858, i. p. 142; 1 Clif. & Rick. 22.

201; 3 ib. 50. 81. 442; Rick. & M. 213.

<sup>5</sup> 1 Saund. & A. 341; and cf. 1 Clif. & Rick. 207; 3 ib. 301. 457 (landowners' petition); 2 Saund. & A. 106 (petition of Local Authority under standing order 134A), 128; 1 Saund. & B. 43, 100, 134. 143.

to petitioners against the Thames and Severn Navigation Bill and the Birmingham Waterworks Bill.<sup>1</sup> In the same year the referees also refused a hearing to the commissioners of Bray against the Bray Improvement Bill, as the meeting at which their petition had been signed was proved not to have been duly convened; and, in the case of the Caledonian Railway (Edinburgh Stations) Bill, to petitioners who had subscribed the petition for other parties.<sup>2</sup> But in the case of the Sligo Borough Improvement Bill, 1867, they allowed the Sligo town and harbour commissioners to be heard, on a petition signed by the major part of a committee appointed by the governing body to direct the proceeding in reference to the opposition to the bill.<sup>3</sup> In 1874, a petition signed by the chairman of the Neath Harbour Commissioners was held not to be the petition of the commissioners, as it contained no allegation of his authority to sign on their behalf.<sup>4</sup> But the petition of a committee of poor law guardians acting as a rural sanitary authority, signed by their chairman under a resolution of the sanitary authority, has been admitted, as it appeared that the guardians, in that capacity, had no common seal.<sup>5</sup> And in other cases where the petition of a company contained no allegation of its having been signed by the directors' authority, or was not sealed with the company's seal, a *locus standi* has been granted to the petitioning company when the authority to sign the petition was proved to the satisfaction of the referees.<sup>6</sup> The directors of a shipping company have been heard, upon their petition, without any special authority from their company.<sup>7</sup> And a landowner has

<sup>1</sup> Smethurst, App. 97.

<sup>2</sup> Smethurst, App. 174.

<sup>3</sup> 1 Clif. & Steph. App. 7.

<sup>4</sup> 1 Clif. & Rick. 117 (Swansea Harbour Bill). In 1877, a petition signed by several Derbyshire magistrates, who had been appointed as a committee by the quarter sessions and empowered to petition against the Derby Corporation Bill, was not entertained, as it contained no allegation that they had been authorized, either by the quarter sessions or the committee, to sign it, 2 Clif. & Rick. 5. 7.

<sup>5</sup> 1 Clif. & Rick. 272; 1 Clif. & Steph. App. 3-4.

<sup>6</sup> 3 Clif. & Rick. 316; Rick. & M. 14. 270-1. And cf. also Rick. & S. 163 (case of vicar and churchwardens authorized to sign at public meetings), and 1 Saund. & B. 138 (signature of two of the promoters

of a competing bill on behalf of all the promoters). In the Glasgow Gas Bill, 1843, an objection was taken that the seal attached to a petition was not the corporate seal of a company; and when this was proved to be the case, all the evidence in support of the petition was ordered to be expunged. See also the proceedings on the Great Northern Railway Bill, 7th May, 1847, 102 C. J. 490. It has been held that parties petitioning against a provisional order bill were not debarred from appearing before the committee by the fact of their having originally signed a memorial asking the promoting parties to apply for a provisional order, 1 Clif. & Rick. 118.

<sup>7</sup> 2 Clif. & Rick. 25. 261; 3 ib. 316; Rick. & M. 14.

been allowed a hearing upon a petition signed by his agent, who had a general power of attorney for the administration of his estates.<sup>1</sup> The referees, however, have declined to inquire into the genuineness of the signatures to a petition, that being a matter for the consideration of the house.<sup>2</sup>

The bill before the referees during their consideration of a case is not the "filled-up" bill (see p. 667) as proposed to be amended and submitted to the committee by the promoters; and a petitioner is not refused a *locus standi* because the promoters undertake, by amendments in the filled-up bill, to meet his objections to the bill as deposited,<sup>3</sup> but has uniformly been allowed to go before the committee to see that this undertaking is carried out.<sup>4</sup>

In some instances where a *locus standi* against a private bill has been disallowed by the referees, the petitioners' case has been brought before the house by a motion to instruct the committee on the bill to hear them. Such a motion was made in 1872 with regard to

*Locus standi* against "filled-up" bill.

Revision by the house of decisions of referees.

<sup>1</sup> 1 Clif. & Rick. 72. Evidence of authority to sign without a power of attorney has been held to be insufficient, 3 Clif. & Rick. 155.

<sup>2</sup> 1 Clif. & Rick. 119; 2 ib. 321. And cf. the special report from the committee on the Glasgow Municipal Extension Bill, 1879, who inquired into the genuineness of the signatures to a petition against the bill, and refused a hearing to the parties appearing before them on the petition, 134 C. J. 176.

<sup>3</sup> The bill as deposited, however, has been considered by the referees to include such amendments as the standing orders committee shall have required to be made in it as a condition of its proceeding; Renfrew Burgh, &c., Bill, 1898, 153 C. J. 75, 1 Saund. & A. 274; Airdrie, &c., Tramways Bill, 1900, 155 C. J. 55, 2 Saund. & A. 2.

<sup>4</sup> 1 Clif. & Rick. 78; Rick. & S. 341-2. 352; 1 Saund. & A. 19. 20; 2 ib. 158-9. In some cases (occurring before the constitution of the court of referees) where land had been shown on the deposited plans as intended to be taken but the amended bill did not propose to interfere with it, or where other clauses affecting the interests of petitioners had been withdrawn, committees held that the petitioners were not entitled to be heard, Cork and Waterford Railway Bill,

1854; Colne Valley and Halstead Railway, and Witney Railway Bills, Group 5, 1859; Wimbledon and Dorking Railway Bill, 1860; Teign Valley Railway Bill, 1863. And in the case of the Severn Valley Railway Bill, 1856 (for extension of time for purchase of land and completion of works), the owners of certain lands which had been excluded from the operation of the bill, as amended, were not heard by the committee. But in the case of the Lancaster and Carlisle Railway Bill, 1858, it was held that a landowner, whose lands were proposed to be taken in the bill, as read a second time, was entitled to be heard, though his lands were omitted from the bill as submitted to the committee. And the referees, not having the "filled-up" bills before them, have supported the right of landowners to be heard, where their lands were proposed to be taken by the bill as deposited, Smethurst, 19; 1 Clif. & Steph. App. 47. 57. 110; 2 ib. 116. Where petitioners and promoters have placed different constructions upon an ambiguously worded clause, the referees have declined to pronounce upon its legal effect but, giving the petitioners the benefit of the doubt, have allowed them a *locus standi* to be heard before the committee, Rick. & M. 59; Rick. & S. 137. 339; and cf. 2 Saund. & A. 48.

petitioners (the Corporation of London) against the Thames Embankment, North, Bill, but was negatived on division.<sup>1</sup> In 1890, on the North British, &c., Railway Bill, an instruction was similarly moved to direct the committee on the bill to hear certain petitioners who had been refused a *locus standi*; and although the motion for an instruction was withdrawn, the case of the petitioners was referred back to the court of referees, who reheard it and granted them a *locus standi*.<sup>2</sup>

Petitioners against private bills that are committed to specially constituted committees.

Where a private bill is specially committed to a select committee nominated (like the committee on a hybrid bill) partly by the house and partly by the committee of selection,<sup>3</sup> the *locus standi* of petitioners against the bill depends upon whatever order as to petitions is made by the house when committing the bill. In some such cases the house has ordered that, "subject to the rules, orders, and proceedings of the house," all petitioners against the bill,<sup>4</sup> or all the petitioners whose petitions shall have been deposited before a specified time,<sup>5</sup> should be heard by the committee; or, that such petitioners "as would otherwise have a *locus standi*,"<sup>6</sup> or "whose *locus standi* may be sustained,"<sup>7</sup> should be heard; and in these cases the petitioners' *locus standi* is determined by the referees. But, more commonly, the house has ordered committees of this kind upon a private bill to hear all the petitioners against the bill,<sup>8</sup> or all petitioners whose petitions shall have been deposited within a specified time;<sup>9</sup> and in such cases it has been held that the jurisdiction of the referees is superseded by the order of the house.<sup>10</sup>

<sup>1</sup> 25th April, 1872, 127 C. J. 159, 210 H. D. 3 s. 1808. Cf. also notice of instruction (not moved) on the Maidenhead Bridge Bill, Private Business, sess. 1904, p. 560 and 159 C. J. 257, 136 Parl. Deb. 4 s. 92-106, 1060-66.

<sup>2</sup> 23rd April, 1890, 145 C. J. 257-8, 343 H. D. 3 s. 1181-5. And cf. Rick, and S. 52, and *supra*, p. 680, n. 1.

<sup>3</sup> See *supra*, pp. 664-666.

<sup>4</sup> 150 C. J. 53; 153 ib. 172.

<sup>5</sup> 154 C. J. 96. Cf. also 146 C. J. 331; 162 ib. 207.

<sup>6</sup> 148 C. J. 233; 154 ib. 83. In both these cases, a time before which the petitions had to be presented was specified.

<sup>7</sup> 137 C. J. 166 (all petitions presented during the session); 148 ib. 84 (all petitions presented before a specified time).

<sup>8</sup> 133 C. J. 62; 136 ib. 466; 138 ib. 223. In the case of the York (Micklegate

Strays) (recommitted) Bill, the house ordered that the "parties interested" should be heard before the select committee, 162 C. J. 422.

<sup>9</sup> All petitions presented during the session:—126 C. J. 65; 127 ib. 312; or within the time limited by standing orders:—141 C. J. 69; 143 ib. 330; 151 ib. 116; or before a specified time:—130 C. J. 230; 137 ib. 121; 139 ib. 89; 140 ib. 81; 144 ib. 101; 145 ib. 300; 146 ib. 101; 147 ib. 73. 78. 97. 110. 194. 281; 149 ib. 56; 151 ib. 80; 164 ib. 104. An order that has been made, referring to the committee petitions presented before a specified time, has subsequently been suspended in favour of a particular petitioner, 147 C. J. 136; 154 ib. 89, 234. 238.

<sup>10</sup> Commercial Gas Bill, 1875, 1 Clif. & Rick. 150.

In 1864 permissive instructions were given to an ordinary private bill committee on a group of Metropolitan railway bills to allow the promoters of certain competing schemes (which the house had ordered not to be proceeded with in that session) to be heard upon their petitions, if duly deposited, against particular bills before the committee.<sup>1</sup> In 1869 all the Metropolitan street tramways bills were considered by one committee, and it was ordered that all petitioners against any of the said bills be heard, without reference to any question of *locus standi*.<sup>2</sup> And in 1905 a mandatory instruction was given, directing the committee on the North East London Railway Bill to hear the promoters of another scheme who had deposited a petition against the bill, and whose *locus standi* was about to be contested before the referees.<sup>3</sup> In 1913 the petitions of certain societies against a clause of a private bill and the relative part of the preamble, presented five clear days before the meeting of the committee on the bill, were ordered to be referred to the committee,<sup>4</sup> and in 1914 the council of a metropolitan borough were permitted to appear upon the allegations contained in their petition against a bill promoted by two railway companies, while the committee were also instructed that they might determine how far the powers of one of these companies to supply electricity should be limited.<sup>5</sup>

Private bill committees instructed by the house to hear certain petitioners.

On the 17th May, 1849, a petition from the attorney-general against a private bill was brought up, and read; and it being stated that it was essential to the public interests that it should be referred to the committee on the bill, the standing order requiring all such petitions to be deposited in the Private Bill Office, was read, and suspended, and an instruction given to the committee to entertain the petition.<sup>6</sup>

Petition specially referred by house to private bill committee.

The general rules as to petitions against private bills and as to the *locus standi* of petitioners having been summarized, the proceedings

Consideration of private bills in committee.

<sup>1</sup> 119 C. J. 167. 190.

<sup>2</sup> 124 C. J. 63. See also 164 ib. 282; 165 ib. 210. In the case of the Devon and Dorset Railway Bill, 1853, certain petitions were specially referred to the committee, with an instruction to hear the parties, who otherwise had no *locus standi* against the bill, 108 C. J. 572; but the committee did not admit the petitioners to a general *locus standi* against the preamble of the bill, but restricted them

within the scope of the allegations of their petition, Suppl. to Votes, 1853, p. 1000.

<sup>3</sup> 160 C. J. 231. Cf. also the notice of instruction (not moved) on the Weaver Navigation Bill, 1893, Private Business, sess. 1893-4, p. 510; and Rick. & S. 312.

<sup>4</sup> 168 C. J. 144. See also 169 ib. 80. 116. 141.

<sup>5</sup> 169 C. J. 93. See also p. 672, n. 5.

<sup>6</sup> 104 C. J. 302.

of committees on private bills—both opposed and unopposed—may now be described.

Opposed bills.

Appearances on petitions.

Copies of the "filled up" bills, and printed copies of the petitions against bills, to be laid before committee.

Order in which bills are considered by committee on a group of opposed bills.

S. O. 125.

In the case of opposed private bills, the agent for each petition against a bill must be prepared with a certificate from the Committee and Private Bill Office of his having entered an appearance upon the petition. This document is delivered to the committee clerk on the first day on which the bill is set down for consideration by the committee;<sup>1</sup> and, unless it be produced, the petition will be entered in the minutes as not appeared upon.<sup>2</sup>

Under Standing Order No. 137, as already described (see p. 669), copies of the bill as proposed to be submitted to the committee, are to be laid, duly signed, by the agent before each member, at the first meeting of the committee. On the 16th February, 1865, it was ordered "that on every private bill to be considered by a committee of this house, all petitions which stand referred to such committee, if not previously withdrawn, be printed at the expense of the petitioners, and copies of such petitions, together with a copy of the bill to be considered, be delivered to each member of the committee on the morning of its first sitting."<sup>3</sup>

The committee on each group of bills is to take first into consideration the bill or bills named by the committee of selection or the general committee; and is to appoint the day on which they will consider each of the other bills, and on which they will require the parties promoting and opposing to enter appearances; and the committee clerk is to give at least two clear days' notice of such appointment, in the Committee and Private Bill Office; and in case the committee shall postpone the consideration of any bill, notice is given of the day to which it is postponed.<sup>4</sup> It is the usual practice

<sup>1</sup> See *supra*, p. 629 (paragraph 8) and *infra*, p. 714.

<sup>2</sup> Minutes of committee on Pontypool Gas and Water Bill, 1890. For cases where an appearance has been allowed to be entered, although not offered at the proper time, see *infra*, p. 714. On the 23rd May, 1848, a petition was presented, praying that a petitioner against a private bill be allowed to be heard upon his petition, notwithstanding his having neglected, until after the commencement of business by the committee, to present a certificate from the Private Bill Office of his having entered an appearance upon his petition. The petition was referred to the com-

mittee on the bill, without any further instruction, 103 C. J. 552; and see *Suppl. to Votes*, 1848, p. 395. In 1874 a petitioner against the Bolton-le-Sands, &c., Reclamation Bill, having failed to enter an appearance, presented a petition that he should be heard on his former petition when the bill was recommitted, and this petition for leave to be heard was referred by the house to the committee on the re-committed bill, 129 C. J. 204.

<sup>3</sup> 120 C. J. 69.

<sup>4</sup> Before this arrangement was made, in 1849, all the parties concerned in the various bills comprised in the same group were required to enter appearances on the



of the committee to consider the several bills in the group in the order prescribed by the printed list ; and this practice is not departed from, unless sufficient grounds be shown for a different arrangement of the business.<sup>1</sup>

If no parties appear on the petitions against an opposed bill, or, having appeared, withdraw their opposition before the evidence of the promoters is commenced, the committee is required to refer the bill back, with a statement of the facts, to the committee of selection—or, if a railway or canal bill, to the general committee—who deal with it as an unopposed bill.<sup>2</sup> And, on the other hand, where the chairman of ways and means informs the house that any unopposed bill should, in his opinion, be treated as opposed (see p. 668), it is again referred to the committee of selection, or the general committee, and dealt with accordingly ;<sup>3</sup> or in some cases—where the bill has been one of a group of opposed bills and the opposition has been withdrawn—an instruction has been given to the committee on the group to sit and proceed with the bill.<sup>4</sup>

The constitution of the committee on unopposed bills has already been described (see p. 662) ; but a short reference to their functions will be convenient in this place, before proceeding to describe the orders of the house which apply equally to committees on opposed and on unopposed bills. The committee consider the preamble and all the provisions of a bill referred to them, and take care that they are conformable to the standing orders. The chief responsibility is imposed upon the chairman of ways and means, who is *ex officio* chairman of the committee when present, and who, being an officer of the house as well as a member, is entrusted, as already stated,

first sitting of the committee ; and although the bills were wholly unconnected in regard to locality or interest, the parties promoting and opposing one bill were detained, at enormous expense, while other bills were under consideration.

<sup>1</sup> Minutes of Committees, 1856, vol. ii. p. 137 ; ib. 1857, vol. ii. p. 634.

<sup>2</sup> In session 1911, a bill having become unopposed after evidence had been taken, was referred back to the committee of selection through inadvertence, but the original committee was revived by order of the house for its further consideration, Local Government Provisional Orders (No. 3) Bill, 166 C. J. 280.

<sup>3</sup> Liverpool, &c., Insurance Company's Bill, 144 C. J. 305 ; Great Indian Penin-

sula Railway Company Bill, 155 C. J. 281 ; York Corporation, West Ham Corporation, and Bradford Corporation, Bills ; Birkenhead, Preston, Salford, Eastbourne, Rathmines, &c., Bills ; Cleethorpes Improvement Bill, 157 C. J. 152. 157. 174. 215. 248, 106 Parl. Deb. 4 s. 512 ; Bootle Corporation Bill, 160 C. J. 199 ; Wandsworth and Putney Gas (Removal of Sulphur Restrictions), South Lincolnshire Water, and Dover Harbour (Works, &c.) (Lords) Bills, 161 ib. 138. 271. 375 ; Metropolitan Electric Supply Company (Acton District) Bill, 166 ib. 51.

<sup>4</sup> King's Lynn Gas Bill, 125 C. J. 72 ; South Essex Reclamation Bill, 126 ib. 218.

with the special duty of examining, with the assistance of Mr. Speaker's counsel, every private bill, whether opposed or unopposed (see p. 626). Although there are no opponents of the bill before the committee, the promoters have to prove the preamble, to the satisfaction of the committee, by the production of the necessary evidence, and by such explanations as may be required of them;<sup>1</sup> and to satisfy the committee of the propriety of the several provisions; that all the clauses required by the standing orders are inserted in the bill; and that such standing orders as must be proved before the committee have been complied with. If it should appear that the bill, from its character or other circumstances, ought to be treated as an opposed bill,<sup>2</sup> the chairman reports his opinion to that effect to the house in accordance with standing order No. 83, already described (see p. 668), and the bill is dealt with accordingly.

Provisions  
to be in-  
serted in  
bills.

It is the duty of every committee to take care that the several provisions required, by the standing orders of the house, to be inserted in private bills, are included in them wherever they are applicable.<sup>3</sup>

Orders re-  
lating to  
all com-  
mittees on  
private  
bills  
whether  
opposed  
or un-  
opposed.

Whether the bill be opposed or unopposed, there are various orders of the house which are binding upon the committee on every private bill, and others which relate only to particular classes or descriptions of bills. It is proposed to state these in their order; and afterwards to describe the ordinary forms observed in the hearing of parties, their counsel or agents, the settlement of the clauses, and the making of amendments.

Reports  
from  
public  
depart-  
ments to  
be referred  
to com-  
mittee.  
S. O. 212.  
150.

All reports made under the authority of any public department upon a private bill, on being laid before the house, stand referred to the committee on the bill; and whenever any recommendation has been made in such a report, the committee are required to notice it in their report, and to state their reasons for dissenting, should such recommendation not be agreed to.<sup>4</sup>

<sup>1</sup> On the 4th May, 1906, in the case of the Mid-Oxfordshire Gas Bill, the committee, after the hearing of the evidence, announced that they considered the finance of the bill so unsatisfactory that, on grounds of public policy, they declared the preamble of the bill not proved (*vide* minutes of committee); and they reported accordingly to the house, 161 C. J. 163.

<sup>2</sup> Waterford and Limerick Railway Bill, and South Eastern Railway (3 and 4 shares) Bill, 105 C. J. 133, 281; Chard

Railway Bill, 108 ib. 587; South Lincolnshire Water Bill, 161 ib. 271. A similar report from the committee on unopposed bills was made regarding the Stratton, &c., Improvement Bill, 1901, by the member acting as chairman of the committee in the absence of the Chairman of Ways and Means, 156 ib. 323.

<sup>3</sup> This is effected in some cases by the incorporation of General Acts.

<sup>4</sup> More particular orders have also been given by the house, directing the



On the 10th May, 1858, a report and correspondence with the office of works and public buildings were referred to the committee on the Victoria Station and Pimlico Railway Bill; and the committee reported that they had made provision, requiring that the approval of the first commissioner of works should be given to a certain portion of the work.<sup>1</sup> The minutes of evidence taken before committees on bills, in former sessions, are frequently referred to committees on bills.<sup>2</sup>

Other documents, minutes of evidence, &c., specially referred.

All questions before committees on private bills are decided by a majority of voices, including the voice of the chairman; and whenever the voices are equal, the chairman has a second or casting vote.

The names of the members attending each committee are entered by the committee clerk in the minutes; and when a division takes place, the clerk takes down the names of the members, distinguishing on which side of the question they respectively vote; and such lists are to be given in, with the report, to the house.

Method of deciding questions in private bill committees.

S. O. 124. Names of members entered in minutes.

S. O. 130.

The committee are precluded from examining into the compliance with such standing orders as are directed to be proved before the Examiners, unless by a special order from the house.<sup>3</sup> In the case of standing orders which are directed to be proved before the committee, the committee may admit affidavits which are to be sworn in the same manner as affidavits produced before the Examiner (see p. 619) in proof of the compliance with such standing orders, or may require further evidence. The committee may also admit

Proof of compliance with certain standing orders only.

S. O. 140. 141. 142.

board of trade to present a report upon the railway and canal bills, or upon the harbour, &c., bills of a session, 112 C. J. 128; 117 ib. 42, &c. or upon certain railway bills only, 122 ib. 23. 102. 110; 128 ib. 222, &c. Latterly, a copy of the report of the board of trade, upon all the railway, canal, tramway, harbour and tidal waters, electricity, gas, and water bills, and provisional orders of the session, has been ordered each session to be laid before the house, 132 ib. 4; 160 ib. 32. And in pursuance of standing orders, presently to be noticed, other reports are made by the board.

<sup>1</sup> 113 C. J. 161. 166. On the 19th June, 1854, the Lords referred an admiralty report to the committee on the York, Newcastle, and Berwick Railway Bill, with an instruction to hear the board of admiralty, by their counsel and witnesses, in reference to the bill, 86 L. J.

256.

<sup>2</sup> 112 C. J. 156. 173. 205. 235; 117 ib. 267; 122 ib. 218. 221; 146 ib. 218; 155 ib. 289, &c. Evidence of committee of current session referred, 100 ib. 536.

<sup>3</sup> Practically the only case in which such an order is given is where the house (on the report of the standing orders committee) allows parties to proceed with their bill provided that they prove compliance before the committee with particular requirements with which they had neglected to prove compliance under the preliminary standing orders before the Examiners. Cf. Belfast and County Down Railway Bill, 1854, 109 C. J. 78; and Suppl. to Votes, 1854, p. 581. When any special inquiry in reference to the standing orders is involved, however, the matter has been referred to the Examiners rather than to the committee. Cf. *supra*, p. 635.

proof of the consents of "parties concerned in interest in any private bill," by affidavits sworn in the same manner, or by the certificate in writing of such parties, whose signatures are to be proved by one or more witnesses, unless the committee require further evidence.

Agree-  
ments.  
S. O. 174.

Orders  
relating  
to com-  
mittees  
on par-  
ticular  
kinds of  
bills.

Provision  
as to  
subscrip-  
tions.

S. O. 144.  
Where  
level of  
roads is  
altered.  
S. O. 145.

Tolls,  
rates, &c.,  
in railway,  
dock, &c.,  
bills.  
S. O. 145A.

Railway,  
&c., bills.

Where any agreement is to be sanctioned by any bill, such agreement is to be printed as a schedule to the bill.<sup>1</sup>

In addition to these orders that relate to every private bill, there are others that relate to particular descriptions of private bills, or to bills by which particular objects are to be authorized.

Thus, in all bills for carrying on any work by means of a company, commissioners, or trustees, provision is required to be made for compelling subscribers to make payment of the sums severally subscribed by them.

Where the level of any road will be altered in the making of any public work, the ascent of any main road is not to be more than one foot in thirty feet, and, of any other public carriage road, not more than one foot in twenty feet; and a good and sufficient fence, of four feet high at least, is to be made on each side of every bridge to be erected.

In the case of any bill relating to a railway, tramway, canal, dock, harbour, navigation pier or port,<sup>2</sup> seeking powers as to tolls, rates, or duties in excess of those already authorized, the bill is not to be reported by the committee until a report from the board of trade on the powers so sought has been laid before them, and the committee are to report specially in regard to the recommendations contained in the report of the board of trade. And in furtherance of the objects of this standing order, bills have been recommitted.<sup>3</sup>

With regard to railway bills, there are numerous standing orders (in addition to standing order No. 145A) to which the particular attention of the committee on every such bill, and of the promoters and opponents of such bills, should be directed. By these standing orders, (1) particular matters for the investigation of the committee are pointed out; (2) certain fixed principles of legislation are laid down, from which the committee, except in special cases, will not

<sup>1</sup> For a case in which, and the conditions upon which, compliance with this standing order was dispensed with, see 167 C. J. 42. 263.

<sup>2</sup> By standing order 168A, standing orders No. 145A, and Nos. 158 to 168, inclusive, are applied, *mutatis mutandis*,

to Subways, Subway Companies, and Subway Bills, and to Tramroads, Tramroad Companies, and Tramroad Bills.

<sup>3</sup> Exeter, Teign Valley, &c., Railway Bill, and Windsor, Ascot, &c., Railway Bill, 138 C. J. 213. For recommitment of private bill, cf. *infra*, p. 735.

be justified in departing; and (3) particular clauses are required to be inserted.

Whether the bill be opposed or unopposed, the promoters, in proving the preamble of a railway bill, must be prepared with sufficient evidence to satisfy the committee and enable them to report to the house the matters specially referred to their consideration; and the reports should be carefully prepared by the promoters of the bill.

Matters to be investigated by committees on railway bills.

The committee are to report specially whether any report from any public department has been referred to the committee, and if so, in what manner its recommendations have been dealt with by the committee; and whether the railway is intended to cross on a level any railway, turnpike-road, or highway. The committee are also to report any other circumstances of which, in their opinion, the house should be informed.

Matters to be specially reported. S. O. 157.

Some of these orders specifying matters which must be specially reported on by the committee are often inapplicable; and, in such cases, the committee state in their report their reasons for considering that any of them do not apply to the bill, and report upon the others.

When the standing orders do not apply.

The principles of legislation to be observed by the committee on a railway bill are as follows:—

Principles observed by committees on railway bills.

In a railway or tramway bill no company is to be authorized to raise, by loan or mortgage, a larger sum than one third of its capital; or, until fifty per cent. of the whole of the capital has been paid up, to raise any money by loan or mortgage, unless the committee report that these restrictions should not be enforced.

Restrictions on loans.

S. O. 153.

Where the level of any road is altered in making a railway, the ascent of a turnpike-road is not to be more than one foot in thirty; and of any other public carriage-road not more than one in twenty; unless a report from an officer of the board of trade shall be laid before the committee, and unless the committee, after considering such report, and examining the officer, if they disagree with this report, shall recommend steeper ascents, with the reasons and facts upon which their opinion is founded. A sufficient fence of four feet, at least, is to be made on each side of every bridge which shall be erected.

Ascent of roads.

S. O. 154.

<sup>1</sup> Many Irish railway companies have been authorized to borrow an amount equal to half the capital. Ballymena

and Larne Railway Bill, 1885; Bray and Inniskerry Railway Bill, 1886; Kingstown and Kingsbridge Junction Bill, 1887.

Level  
crossings.  
S. O. 155.

No railway is to be made across any railway, tramway, tramroad, or public carriage-road, on the level, and no tramway is to be made across any railway on the level, unless a report of some officer of the board of trade shall be laid before the committee, and unless the committee, after considering such report, and examining the officer, if they disagree with his report, shall recommend such level crossing, with the reasons and facts upon which their opinion is founded; and in every clause authorizing a level crossing, the number of lines of rails is to be specified.

Acquisition of  
canals,  
docks,  
&c., by  
railway  
companies.  
S. O. 156.

Standing order No. 156 provides that no railway company shall be authorized

to construct, or enlarge, purchase, or take on lease, or otherwise appropriate any canal, dock, pier, harbour, or ferry, or to acquire and use any steam vessels for the conveyance of goods and passengers, or to apply any portion of their capital or revenue to other objects, distinct from the undertaking of a railway company, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded; <sup>1</sup>

Powers to  
purchase  
steam-  
vessels.  
S. O. 162.

And, by standing order No. 162,

"No powers of purchasing, hiring, or providing steam-vessels shall be contained in a bill by which any other powers are sought to be obtained by a railway company, except when the transit by such steam-vessels is required to connect portions of railway belonging to, or proposed to be constructed by, such company."

Committee on  
railway  
bill to fix  
rates and  
charges.  
S. O. 159.

The committee are to fix the maximum rates of charge for the conveyance of passengers (and the charges for parcels conveyed by passenger train <sup>2</sup>); or, should they not deem it expedient to determine such maximum rates, they must make a special report, with their report of the bill, explanatory of the grounds of their omitting to do so.

Abandonment of  
railway,  
&c.  
S. O.  
158B.

In the case of every bill for the abandonment of a railway, tramway, or subway, or any part thereof, and for the release of any deposit money impounded as a security for completion, the committee have specially to report how they have dealt with the recommendations contained in a report which the board of trade is required to present to the house respecting the bill.

Preference  
divides

No railway company is to be authorized to alter the terms of any

<sup>1</sup> Where a committee has failed to report specifically such reasons and facts, the bills have been recommitted for that purpose. Great Eastern, and North British, Railway Bills, 1863; Caledonian

Railway (Edinburgh Station) Bill, 1866; East London Railway Bill, 1870; Southampton Dock Bill, 1892, &c.

<sup>2</sup> See also standing order, 186A, *infra*, p. 707.

preference or priority of interest or dividend, unless the committee report that such alteration ought to be allowed, with the reasons on which their opinion is founded, together with the number of preference shareholders who have assented to or dissented from such alteration.<sup>1</sup>

(railway companies) not to be altered.  
S. O. 161.

No powers of purchase, sale, lease, or amalgamation are to be given to a railway company with reference to any other undertaking already authorized or to works intended to be authorized in the current session—and no such powers are to be given to any other incorporated company respecting any railway—unless certain matters connected with the capital of such companies be proved to the satisfaction of the board of trade.<sup>2</sup> No such powers are to be given in respect of works intended to be authorized in a subsequent session.

Powers of purchase.  
S. O. 163.

No railway company is to be authorized, except for the execution of its original lines sanctioned by Parliament to guarantee interest on any shares issued for creating additional capital, or to guarantee any rent or dividend to any other railway company, until its original lines have been opened for traffic.

Guarantee of dividend before completion of lines.  
S. O. 164.

In bills for the amalgamation of railway companies, the amount of capital created by such amalgamation is in no case to exceed the sum of the capitals of the companies so amalgamated.

Limitation of capital on amalgamation of railways.  
S. O. 165.

In bills for empowering a railway company to purchase any other railway, no addition is to be made to the capital of the purchasing company, beyond the capital of the railway purchased; even if the railway is purchased at a premium.

On purchase of railway.  
S. O. 166.

It is the duty of committees to take care that the provisions of the bill are in conformity with these principles and regulations: but no special form of enactment is prescribed for carrying the intentions of Parliament into effect. Some of these orders are not obligatory upon the committee, provided they report to the house their reasons for not enforcing them in any particular case. In other cases, the house has not entrusted the committee with discretionary powers:

Duty of committee as regards these provisions.  
S. O. 166.

<sup>1</sup> See also standing order, 160, *infra*, p. 706.

<sup>2</sup> A clause has sometimes been inserted in bills for this purpose, suspending the operation of the power of transfer till the certificate of the board of trade has been produced, *Roseneath and Fishguard Railway Bill*, 1881; *London and South Western Railway Bill*, 1883. The provision contained in this standing order,

which requires both companies to prove that they have respectively paid up one-half of their capital, was held not to apply in the case of the *Midland Railway Company's Bill* of 1888, and of the *Great Western Railway Company's Bill* of 1901, when the unexercised powers of another company were transferred to the promoting company.

but committees have occasionally exercised a discretion, subject to the approval of the house, and have made special reports.<sup>1</sup>

Clauses to be inserted in railway bills. There are also special clauses which are to be inserted in every railway bill to which they are applicable.\*

Protection of existing preference shares. Where it is proposed to authorize the company to grant any preference or priority in the payment of interest or dividends on any shares or stock, a clause is required to be inserted, providing that the granting of such preference shall not prejudice or affect any preference or priority in the payment of interest or dividends on any other shares or stock already lawfully subsisting; unless the committee report that such provision ought not to be required, with the reasons on which their opinion is founded.<sup>2</sup>

Limit of time for completion of line. In every railway, tramway, or subway bill providing for the construction of any new line, or for extending the time for the completion of a line already authorized, the following provisions, founded upon the recommendation of a joint committee of Lords and Commons in 1867, are to be inserted.<sup>3</sup> (A) If such bill is promoted by an existing company which has a railway, tramway, or subway already opened for public traffic, and which during the last year has paid dividends upon its ordinary share capital and which does not seek in the bill to raise capital greater than its existing capital, a clause is to be inserted, providing that if the company fail to complete the line within the time limited by the Act, it shall be liable to a penalty of 50*l.* a day, until the line has been completed and opened for public traffic, or until such penalty amounts to five per cent. on the estimated cost of the work. (B) If such bill is promoted by an existing company which has not a line already opened for public traffic or which during the last year has not paid dividends upon its ordinary share capital, or by an existing company when the capital to be raised is greater than the company's existing capital, or

And security for completion.  
S. O. 158A and 168A.

<sup>1</sup> York and North Midland Railway Bill, 1850 (Suppl. to Votes, p. 59); Eastern Union Railway Bill, 1850 (ib. p. 113); Manchester, Sheffield, and Lincolnshire Railway Bills, 1850 and 1891 (Suppl. to Votes, 1850, p. 151; ib. 1891, p. 1607).

<sup>2</sup> For cases in which such reasons have been given, see Eastern Counties Railway Bill, Suppl. to Votes, 1853, p. 158; Monkland Railways Bill, ib. 193; Great Northern Railway (No. 1) Bill, ib. 231; North British Railway Bill, ib. 287; Aberdeen Railway Bill, ib. 289; Great Western

(Henley, &c.) Bill, ib. 371; Carlisle Railway Bill, ib. 515; York, Newcastle, and Berwick, &c., Bill, ib. 585, &c.; South Eastern Railway (Lewisham and Bromley) Bill, Suppl. to Votes, 1854, p. 92; Great Western (Shrewsbury and Birmingham, &c.) Bill, ib. p. 299; York, Newcastle, and Berwick, &c., Bill, ib. p. 367; Leeds Northern Railway Bill, ib. p. 457.

<sup>3</sup> The terms of the clauses to be inserted are indicated at length in the two standing orders (158 and 158A).

by persons not incorporated, a clause is to be inserted, providing that the deposits paid under the standing orders shall be retained, and made liable to forfeiture unless, before the time limited for completing the line, the company shall either open it for the public conveyance of passengers, or prove that it has paid up and expended one-half of its capital for the purposes of the Act.<sup>1</sup> (C) Another clause is required to be inserted, providing that the penalties recovered, or deposits forfeited, shall be applied to the compensation of land-owners or other persons whose property may have been interfered with or affected. And (D) a clause is to be inserted, providing that if the railway, or tramway<sup>2</sup> is not completed within the period limited by the bill, the powers for making the same shall cease; and the period limited in case of a new line is not to exceed five years, and in the case of an extension of time is not to exceed three years, unless the committee, in special circumstances, think fit to allow a longer period.<sup>3</sup> Standing Order 158A directs that where—

“the preceding provisions are not applicable, the committee on the bill shall make such other provision as they shall deem necessary for ensuring the completion of the line of railway or tramway.”

In the case of every bill for incorporating a railway, canal, or tramroad company, or for giving powers to an existing company to which no Rates and Charges Order Confirmation Act applies, the committee are to fix the rates and charges for merchandise traffic (including a certain description of parcels conveyed by passenger train<sup>4</sup>) by reference to the Rates and Charges Order Confirmation Act of some other company which they consider applicable, the rates and charges so fixed being substituted, in the case of an existing company, for those previously authorized to be taken. If in any such bill other than a railway bill the committee are of opinion that no such Act will apply, they are to insert a clause (described in the

Revision  
of rates  
under  
Railway  
and Canal  
Traffic  
Act, 1888.  
S.O. 166A.

<sup>1</sup> In 1880, and again in 1885, a committee having specially reported to the house certain circumstances bearing on the observance of this standing order in the case of the bill before them, the question was referred to the standing orders committee, and their report thereon was referred to the committee considering the bill, 135 C. J. 232. 260; 140 ib. 118.

<sup>2</sup> 160.

<sup>3</sup> See *supra*, p. 702, n. 3.

<sup>4</sup> Previous to the passing of this

discretionary proviso, committees had allowed in several cases longer periods, and mentioned the fact in their report. Midland Railway Bill, 1881; Golden Valley Railway Bill, 1882; Ban Navigation and Railway Bill, 1885; Pembroke-shire and Fishguard Railway Bill, 1886; St. Helen's District Tramway Bill, 1881; Ipswich Tramway Bill, 1882.

<sup>5</sup> See also standing order 159, *supra*, p. 704.



standing order) making the company subject to the provisions of the Railway and Canal Traffic Act, 1888, as to the revision of rates.

Interest  
or divi-  
dend not  
to be  
paid on  
calls.

In every railway bill a clause is to be inserted prohibiting the payment of interest or dividend to any shareholder in respect of calls, except on subscriptions which have been prepaid. But the committee on the bill may allow the payment of interest out of capital upon conditions set forth in the standing order, reporting to the house accordingly.<sup>1</sup>

S. O. 167.

Deposits  
not to be  
paid out  
of capital.

A clause is also to be inserted, prohibiting a railway company from paying, out of the money they are authorized to raise by their bill, the deposits required for any bill for the construction of another railway.

S. O. 168.

Railway  
not to be  
exempt  
from  
general  
Acts.

In all railway bills a clause is to be inserted, providing that the railway shall not be exempted from the provisions of any general Acts, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges previously authorized.

S. O. 168a.

Statement  
as to  
length of  
line.

In every railway, tramway, or subway bill the length of the line is to be set forth in miles, furlongs, chains, and yards, or decimals of a chain, in the clause describing the works, with a statement, in the case of each tramway, whether it is a single or a double line.

S. O. 170.

Applica-  
tion of  
Railway  
and Canal  
Traffic  
Acts to  
Tram-  
roads.

With regard to tramroad bills, the standing orders provide that in every bill for the construction of a tramroad of railway gauge, and intended to communicate with a railway, a clause is to be inserted providing that the Railway and Canal Traffic Acts shall apply to the company and tramroad; and the length of so much of it as is constructed along a street or road, or upon waste by the side of a street or road, is to be set forth.

S. O. 168c  
and 169.

Tramway  
bills.

Restric-  
tion on  
power of  
acquisi-  
tion of  
tramways  
by local  
authori-  
ties.

S. O. 170a.

In the case of tramways, no powers are to be given to any local authority to construct, acquire, take on lease or work any tramway beyond the limits of their district, unless it is in connection with a tramway which belongs to them or which they are authorized to construct, acquire, or work, and unless the committee on the bill determine that, having regard to the special local circumstances, such powers ought to be given. If the committee so determine, they must specify what portion of the tramway will be beyond the district of the local authority to whom such powers are given; and they must insert a protective clause (in terms indicated in the

<sup>1</sup> In the Mersey Railway (Various Powers) Bill, 1887, payment of interest out of capital was refused by the committee.



standing order) conferring upon the local authority, in whose district it will be situate, an eventual option of purchasing such tramway or portion of tramway.

Where a local authority are empowered to work tramways belonging to them or authorized to be acquired by them, they may also be empowered to enter into agreements for running powers over any tramways in connection with those that they so work. But in such cases the committee on the bill must make provision as to the approval of such agreements by the board of trade and as to the observance of certain other conditions, and must report the circumstances specially to the house.

Running powers in tramway bills.

S. O. 171.

In the case of a bill for restoring any letters patent the committee are to see, in compliance with the standing orders, "that there be a true copy of the letters patent annexed to the bill."<sup>1</sup> This copy should be attached to the bill when first brought into the house; and if its omission were noticed in the house, at any time before the bill was in committee, the bill might be ordered to be withdrawn.

Letters patent bills.

S. O. 175.

Provision is made by standing order that private bills affecting charities and educational foundations in England and Ireland shall not be considered in committee until the house has received a report from the attorney-general for England or Ireland, as the case may be, which stands referred to the committee.

Bills affecting charities or educational foundations.

S. O. 175A.

There are several standing orders relating specially to bills for the inclosure and drainage of lands, compliance with which is to be examined and enforced by the committee on the bill. These are relative to the proof of notices, and of the allegations in the preamble of the bill; the consent bill, signed by the lord of the manor and the owners of property; a statement of the property of owners, assenting, dissenting, or neuter.<sup>2</sup> In the case of drainage bills, the assents of the occupiers as well as owners of land are to be proved, but not that of the lord of the manor.

Inclosure and drainage bills. Notices, &c.

S. O. 176. 177. 178.

In every bill for inclosing lands, it is ordered that provision be made for leaving—and for fencing and maintaining—an open space "sufficient for purposes of exercise and recreation of the neighbouring population;" also that the bill should contain the names of the commissioners proposed to be appointed, and compensations intended

Clause for providing recreation ground, &c.

S. O. 179. 180. 181. 182.

<sup>1</sup> It must also be proved before the committee that the fees due on the patent have been deposited.

<sup>2</sup> On a report from the committee that the lord of the manor had declined to sign

the bill, but did not oppose it, and desired to remain neuter, the part of the order relating to the consent of the lord of the manor has been dispensed with, Thetford Inclosure, 99 C. J. 182.

for the lord of the manor and others, and that the copies of such bills sent to persons interested, for their consent, should contain this information; that certain persons should be disqualified as commissioners; and that a clause should be inserted settling the pay of the commissioners and providing for the passing of their accounts.

Inclosure provisions in private bills.

S. O. 183.

Provisions as to houses of the working classes (Scotland or Ireland).

S. O. 184.

Accommodation for workmen on works.

S. O. 184A.

Whenever a private bill contains any provisions relating to the inclosure of land, which might be comprised in a provisional order, under the Acts for the inclosure and improvement of land, the committee are to make a special report to the house.

In every bill by which power is sought to take land in Scotland or Ireland, compulsorily or by agreement, clauses—which are fully set forth in standing order No. 184—are to be inserted (1) providing that the promoters, in exercising such power, shall not purchase or acquire in any local area any house or houses, occupied wholly or partially, by thirty or more persons (as tenants or lodgers) belonging to the working class, until they have obtained the approval of the “central authority”<sup>1</sup> to a scheme for providing sufficient accommodation for the persons to be displaced, and have given security for carrying out the scheme; (2) imposing adequate penalties on the promoters in case of their contravention of these provisions; (3) providing for the payment of the expenses incurred by “the central authority;” and (4) conferring powers on the authority and on the promoters for carrying out the scheme.

In the case of every bill authorizing the construction of works outside the county of London or any municipal borough<sup>2</sup> if the committee are of opinion, in view of the number of workmen to be simultaneously employed and the nature and situation of the works, that such an inquiry is desirable, they are to inquire into the question of the sufficiency of the accommodation and service available or proposed by the promoters to be provided under the bill for the proper housing and sanitary requirements of persons employed in constructing the works authorized and for the treatment of cases of sickness, infectious disease or accident, and if they think that further accommodation or service for those purposes ought to be provided, they are to insert in the bill such clauses as in their opinion are necessary to secure the provision of satisfactory accommodation or service for those purposes.

<sup>1</sup> This expression is fully defined in standing order No. 38.

<sup>2</sup> This standing order has been applied

by instruction to a bill as if it were a bill authorizing the construction of works, 167 C. J. 46.

The committee on a turnpike-road bill relating to Ireland are to insert a clause providing for the qualification of commissioners. Turnpike roads (Ireland).

In the case of a bill for impounding or abstracting the whole or any part of, the water of any river or stream, the committee are to inquire into the expediency of providing that the water to be supplied in compensation should be given in a continuous flow throughout the twenty-four hours of the day, and to report accordingly. S. O. 186.  
Compensation water.  
S. O. 185.

In every bill for making gasworks or sewage-works, or works for the manufacture or conversion of the residual products of gas or sewage, or for making, altering, or enlarging any sewage farm, cemetery, burial-ground, crematorium, destructor, hospital for infectious diseases, or electric generating station, there is to be a clause defining the lands in or upon which the same are to be made or constructed. Limits of burial-ground, gasworks, &c., to be defined.  
S. O. 187.

And by standing order No. 157A—

In the case of any bill relating to the generation of electricity for supply to persons or bodies other than the promoters, the bill shall not be reported by the committee until a report from the board of trade and His Majesty's office of works on the powers sought has been laid before the committee; and the committee shall report specially to the house in what manner the recommendations or observations in the report or the board of trade and His Majesty's office of works, and also in what manner the clauses of the bill relating to the powers sought, have been dealt with by the committee.<sup>1</sup> Generating stations.  
S. O. 157A.

In every bill in which an existing gas or water company is authorized to raise additional capital, provision is to be made for the offer of such capital by auction or tender,<sup>2</sup> unless the committee report that such provision ought not to be required, with their reasons; and it is competent to the committee so to regulate the price of gas, that any reduction of the authorized standard price shall entitle Bills relating to gas and water companies (auction clauses, and standard price for gas).  
S. O. 188.

<sup>1</sup> Up to 1899 practically all applications for powers to supply electricity were made by means of provisional orders granted by the board of trade under the Electric Lighting Acts, 1882 and 1888 (*infra*, p. 772). The increasing need for generating electricity for motive power and other purposes, and over large areas, however, led to a great increase in the number of applications by means of private bill instead of by the procedure under these Acts. The provisions dealing with generating stations inserted in the standing orders in 1901 and 1903 were modified in 1907, 156 C. J. 413; 158 ib. 369; 162 ib. 440.

<sup>2</sup> In gas companies' bills, the "model" clause for raising additional capital includes, under the nominal capital so created, "any premium which may be obtained on the sale thereof."

<sup>3</sup> Bognor Water, 1891. Additional capital raised by debentures or debenture stock is not usually considered to come under this standing order; but an exception in this respect has been made. In the South Metropolitan Gas Bill, 1901, and the Bromley Gas Bill, 1902, the company were authorized, with the consent of the board of trade, to offer capital to consumers and employees at five per cent. below market value.

the company to make a proportionate increase of dividend, and that any increase above the standard price shall involve a proportionate decrease of dividend.<sup>1</sup>

Estimates  
in local  
authori-  
ties' bills  
(England  
and  
Wales).  
S. O. 172.

In the case of bills authorizing a local authority in England or Wales to borrow money for any matter within the jurisdiction of the board of trade or local government board, estimates of the proposed application of the money are (except so far as the borrowing power is to be exercised subject to the sanction of the board) to be recited in the bill, and to be proved before the committee, while copies of the estimates of expenditure and statements required to be deposited under standing order No. 36A are also to be laid before the committee.

Bills  
relating to  
local  
govern-  
ment (Ire-  
land).  
S. O. 173.

Whenever application is made by an urban district council, or town or other commissioners in Ireland, for new powers, the promoters are required to obtain a certificate, under the seal of the local government board of Ireland, stating whether such application is made with the sanction and approval of the board, and this certificate is to be reported upon by the committee.

Bills pro-  
moted by  
local au-  
thorities.  
S. O. 173A.

In any bill promoted by, or conferring powers on, a local authority, or public body having powers of local government or rating, the period which the committee may sanction for the repayment of any loan is expressly limited by standing order No. 173A to a term not exceeding sixty years;<sup>2</sup> in considering any provisions in the bill as to borrowing powers and powers relating to police, sanitary and local government matters, the committee must have regard to the provisions as to such powers in existing general Acts; and they

<sup>1</sup> This provision is rendered partially inoperative in cases where a "neutral zone" is adopted, e.g. Crystal Palace District Gas Act, 1893, s. 17, and Preston Gas Act, 1894, s. 47; and cf. Michael and Will, Law relating to Gas and Water (5th ed.), p. cvii. By the first-named Act the Crystal Palace District Gas Company were also authorized to convert their existing capital by doubling its nominal amount and halving the rate of interest. Similar conversions of their stock by statutory gas companies were authorized in the Ryde Gas Act, 1904, and other cases.

<sup>2</sup> A period exceeding sixty years having been sanctioned in 1887, by the committee on the Sheffield Corporation Water Bill, for the redemption of certain annuities, and in 1889, by the committee

on the Bury Corporation Bill, for a similar redemption and for the repayment of a loan, exception was subsequently taken in both cases in the house. In the former case, the house resolved that the committee's action was contrary to standing order 173A, but, in the special circumstances of the case, permitted the bill to proceed, Suppl. to Votes, 1887, p. 1501, 142 C. J. 404, 318 H. D. 3 s. 300. On the Bury Corporation Bill a similar exception on the same grounds was taken in the house, and, on division, a similar decision was come to, Suppl. to Votes, 1889, p. 1071, 144 C. J. 410, 415, 339 H. D. 3 s. 879, and cf. Suppl. to Votes, 1884-5, p. 1049. Cf. also the similar proceedings on the Derwent Valley Water Board Bill, 156 C. J. 158, 93 Parl. Deb. 4 s. 572-580.

must report specially upon these and other points specified in the standing order.

As already mentioned (see p. 666) a select committee is annually appointed by the house for the consideration of all those bills, whether opposed or unopposed, in which a local authority seeks for "powers relating to police, sanitary, or other local government regulations in conflict with, deviation from, or excess of, the provisions of the general law."<sup>1</sup> The order of reference to this committee has varied in form in different sessions. Under its terms as passed in 1909, and subsequently,<sup>2</sup> the number of the committee may not exceed fifteen members, who are nominated by the committee of selection, four being the quorum. Should the committee be of opinion that it is not necessary or advisable for them to deal with any clauses (other than those containing police, sanitary, or other local government regulations) in any bill referred to them, they may inform the committee of selection, who must then refer the bill to another committee in respect of those portions of it with which the Local Legislation committee do not deal.<sup>3</sup> If any loan is authorized under those portions, however, the Local Legislation committee determine the mode of its repayment, and it is they who finally report the whole bill to the house, stating in their report what parts have been considered by each committee.<sup>4</sup> The Local Legislation committee are also empowered, if they think fit, to sit as two committees, between

Committee on bills containing Police, Sanitary, and Local Government provisions.

<sup>1</sup> In 1893 the Stalybridge and Dukinfield Sewerage Bill, although it contained no "police or sanitary" clauses, was added (by the committee of selection) to the bills referred, under the order of the house, to the police and sanitary committee, it being thought desirable that the bill should be considered by this committee in conjunction with one of the bills already before them, Private Business, 1893, p. 373. The same course was followed in the case of the Trafford Park Bill, Private Business, 1904, p. 749, and in the case of the Liverpool Corporation (Streets and Buildings) Bill, pursuant to an instruction of the house, 1903 C. J. 78.

<sup>2</sup> 164 C. J. 43. Standing order No. 173a, just mentioned, and standing order No. 150, mentioned on p. 700, are specifically made applicable to all bills referred to the committee; and power is given to the committee to send for persons, papers and records.

<sup>3</sup> In session 1914, the committee of selection were instructed, if the local legislation committee reported to them that a private bill and certain parts of two other private bills dealing with the same subject should be referred to another committee, to refer the bill and the parts of the other bills to a select committee to be nominated by the Committee of Selection, 169 C. J. 80. 97. 101.

<sup>4</sup> In 1904 the Selby Urban District Council Bill was thus dealt with, Part III. of the bill being referred by the committee of selection to the committee on Group H. of private bills, Private Business (1904), pp. 131. 424. 453; Suppl. to Votes (1904), p. 1785; and 159 C. J. 254. And cf. Rhondda Urban District Council, Bolton Corporation, and Rathmines, &c., Improvement Bills, 1905, Private Business (1905), pp. 170. 175; Suppl. to Votes (1905), pp. 483. 623. 683; and 160 C. J. 183. 201. 217; &c.

which they may apportion the bills referred to them, each of these sections having the same powers and quorum as the undivided committee.<sup>1</sup> Since 1910 standing order 124 has been extended to the committee, with the result that the chairman of the committee or of each section votes on any question before it like other members, and in the case of an equality of voices has also a second or casting vote as in ordinary private bill committees (see p. 701).<sup>2</sup>

General proceedings of committees on opposed bills.

Having adverted to the various matters which are required by the standing orders to be reported upon by committees,<sup>3</sup> or to be proved before them, and the peculiar provisions required to be inserted in particular bills, the general proceedings of committees upon opposed private bills may be briefly explained. These are partly regulated by the usage of Parliament, partly by standing orders, and partly by statute.

Committee-room: when open and when cleared.

When counsel are addressing the committee, or while witnesses are under examination, the committee-room is an open court: but when the committee are about to deliberate, all the counsel, agents, witnesses, and strangers are ordered to withdraw, and the committee sit with closed doors. When they have decided any question, the doors are again opened, and the chairman acquaints the parties with the determination of the committee, if it concerns them.

Parties appear before the committee.

The first proceeding of a committee on an opposed bill, when duly constituted, is to call in all the parties. The counsel in support of the bill appear before the committee. The petitions against the bill in which the petitioners pray to be heard, are read by the committee clerk; and upon each petition with which the parties intend to proceed an appearance is entered, and the counsel or agents appear in support of the petition.<sup>4</sup> If no parties, counsel, or agents appear when a petition is read, the opposition on the part of the petitioners is held to be abandoned.

Appearances upon petitions against bill.

If parties have neglected to enter their appearance at the proper time, they will not be entitled to be heard.<sup>5</sup> In some special cases,

<sup>1</sup> 159 C. J. 48; 160 ib. 42; &c. And cf. report from the police and sanitary committee, Parl. Pap. (H. C.), sess. 1904, No. 314.

<sup>2</sup> 165 C. J. 39.

<sup>3</sup> As to committees on Estate and Divorce bills see standing order 188A-192, and *infra*, Chapter XXX.

<sup>4</sup> Until cases of *locus standi* were heard by the court of referees (see p. 673),

it was also usual at this time to intimate that objections would be raised to the hearing of petitioners.

<sup>5</sup> See *supra*, p. 629 (paragraph 8) and p. 698; Suppl. to Votes, 1849, pp. 204. 288; and ib. 1853, p. 829. Minutes of Committees on opposed bills, 1857, vol. ii. p. 793; Minutes of Group 2, 1860; Minutes of Committee on Pontypool Gas and Water Bill, 1890, &c.

however, indulgence has been granted to them.<sup>1</sup> In one case, the agent who had deposited a petition stated that there was no appearance upon it : but another agent immediately entered an appearance ; and as it was shown that he had regularly obtained the appearance paper from the Private Bill Office, on the production of a letter from the secretary to the company, written by order of the board of directors, stating that they desired to change their agent, and authorizing him to prosecute their petition, the committee allowed the petitioners to be heard.<sup>2</sup> An appearance paper has been allowed to be amended, where it stated that a petition praying to be heard against the preamble related to clauses only.<sup>3</sup>

Where petitions complain of matters arising during the sitting of the committee, or of amendments proposed to be made in the bill, appearances are allowed to be entered, as the occasion arises.<sup>4</sup>

Difficulties have sometimes arisen, when counsel have not been retained, or are absent, in regard to the right of solicitors to be heard as agents for the parties, unless they have been entered as agents for the bill or petition (see p. 627). In 1844 a solicitor was refused a hearing as an agent before one of the sub-committees on petitions for private bills (the predecessors of the Examiners), and it was ruled that such refusal was justified by practice, and by the construction of the standing order ;<sup>5</sup> and this rule has since been followed by the Examiners. Before committees on private bills, however, solicitors have often been heard without objection,<sup>6</sup> where it has been for the convenience of the parties : but in the Mersey Conservancy and Docks Bills, 1857, a solicitor, whose name was specified in the appearance as solicitor for a petition, on claiming to

Upon  
petitions  
on  
matters  
arising in  
commit-  
tee, &c.  
Hearing of  
solicitors.

<sup>1</sup> Minutes of Committee on Group 3 (15th May), 1860 ; on Group 8 (13th March), 1860 ; on Group 3 (4th March), 1862 ; on Group 1 (7th July), 1864, &c.

<sup>2</sup> Minutes of Committee, Group 9, 1863. Where two out of three petitioners had withdrawn their opposition to a bill, and the agent for the petition did not appear, but the remaining petitioner appeared before the committee by another agent, whom he had appointed, it was held that he was entitled to appear (Minutes of Committees on opposed bills, 1858, vol. i. 130).

<sup>3</sup> Minutes of Committee, Group 3, 1859.

<sup>4</sup> Cf. standing orders 89 and 128,

*supra*, pp. 674 and 672, note 3. In 1879 a petition having been deposited complaining of matters which had arisen during the sitting of the committee on an unopposed bill, the Chairman of Ways and Means presented a report from the committee of this circumstance, and the bill was considered, as an opposed bill, by the committee on Group 11, Glasgow Corporation Tramways Bill, 1879 ; 134 C. J. 229 ; and Minutes of Group 11, 13th and 23rd May, 1879. And cf. Minutes of Committee, Group 4, 1859 ; Group C, 1881 ; &c.

<sup>5</sup> 73 H. D. 3 s. 583.

<sup>6</sup> Minutes of Committees on opposed Bills, 1857, vol. ii. pp. 645, &c.

be heard, received an intimation from the committee that he would not be entitled to address the committee until he had entered himself as a parliamentary agent.<sup>1</sup> The Speaker, therefore, authorized the clerks in the Private Bill Office to enter his name as agent for the petition, in addition to that of the agent who had originally taken out the appearance; the latter being still responsible for the payment of the fees, and for the observance of the rules and orders of the house. And before the referees a solicitor who does not appear upon his own petition cannot be heard, unless he has signed the roll of parliamentary agents;<sup>2</sup> nor can a petitioner be heard otherwise than by *himself*, his counsel or parliamentary agent.<sup>3</sup>

Case  
opened.

In the case of a committee on a group of bills, as already stated, the committee take the bill or bills first into consideration, which have been named by the committee of selection or the general committee; and unless a bill comprised in the group be set down for the first day, the promoters and opponents are not to enter their appearance on that day in respect of such bill.

Prelimi-  
nary ob-  
jections.

When the parties are before the committee, the senior counsel for the bill opens the case for the promoters. A preliminary objection is sometimes raised by petitioners to proceeding further with the bill.<sup>4</sup> These objections, however, have not usually been sustained. They ordinarily have referred to questions inherent to the principle and inception of the bill, and as such might have been raised on its second reading. As the bill has been referred by an order of the house to a committee for consideration, the strong presumption is that the duty of the committee is to deal with the bill on its merits, the more so since the argument used in support of a preliminary objection would generally be of equal avail at that stage of the proceedings. Preliminary objections have sometimes been sustained when they have arisen on matters which have occurred after the second reading of a bill.

<sup>1</sup> Minutes of Committees on opposed Bills, 1857, vol. ii. pp. 643. 645. 647.

<sup>2</sup> Birkenhead, Chester, &c., Railway Bill, 1873, 1 Clif. & Rick. 3; Combe Hill Navigation Bill, 1876, ib. 216.

<sup>3</sup> 1 Clif. and Rick. 8.

<sup>4</sup> London and North Western Railway Bill, 1873; Birmingham Corporation Water Bill, 1875; Stockton and Middlesbrough Corporation Water Bill, 1876; Brighton and Hove Gas Bill, 1881;

Tramways Provisional Order (Birmingham) Bill, 1881; Birkenhead Corporation Improvement Bill, 1867 (sustained, excessive alterations in a filled-up bill); Hammersmith and Fulham Recreation Ground Bill, 1884 (sustained); Great Forest of Brecknock Bill, 1893; Local Government Provision Orders (No. 15) Bill, 1903; Sale of Bread (London) Bill, 1905, &c.



Unlike the practice in regard to public bills (see pp. 368. 376 and 355, n.), the preamble of a private bill is first considered ; <sup>1</sup> and if the preamble be opposed, the counsel addresses the committee more particularly upon the general expediency of the bill, and then calls witnesses to prove every matter which will establish the truth of the allegations contained in the preamble. In a railway bill, this is the proper occasion for producing evidence to satisfy the committee upon the most material of the points which, by the standing orders, they are obliged to report to the house. The witnesses may be cross-examined by the counsel who appear in support of the several petitions against the preamble, but not, as to the general case, by the counsel of parties who object only to certain provisions in the bill. Cross-examination is confined to matters comprised in the petitions, except when it is sought to discredit a witness. After the cross-examination, each witness may be re-examined by the counsel in support of the bill.

Proceed-  
ings in  
support of  
the pre-  
amble of  
an op-  
posed bill.

As already stated (see p. 671), all petitions against a private bill, which have been deposited in accordance with the standing orders, and in which the petitioners pray to be heard by themselves, their counsel, or agents, stand referred to the committee ; and such petitioners, subject to the rules and orders of the house, shall be heard upon their petition, if they think fit, and counsel heard, in favour of the bill, against the petition. And the rules and usage of Parliament under which petitioners, before being heard before the committee, are required to have established their *locus standi* (pp. 673-695), and to have entered an appearance upon their petition (pp. 629, 698, 714), have also been already described. Unless petitioners pray to be heard against the preamble, however, they are not entitled to be heard, or to cross-examine any of the witnesses of the promoters upon the general case, or otherwise to appear in the proceedings of the committee, until the preamble has been disposed of. Nor will a general prayer against the preamble entitle a petitioner to be heard against it, if his interest be merely affected by certain clauses of the bill.<sup>2</sup> Petitioners, however, have been heard against the preamble of a bill, although the word " preamble " was not in the prayer of their petition, when their intention was clearly shown

Rules as  
to the  
hearing of  
peti-  
tioners  
against  
the pre-  
amble.

<sup>1</sup> It is the usage of the local legislation committee to postpone the preamble until after the consideration of the clauses of the bill.

<sup>2</sup> Suppl. to Votes, 1843, p. 131 ; ib.

1850, pp. 45, 199, &c. Petitioners, however, who pray to be heard against certain clauses and so much of the preamble as relates thereto, have frequently been heard on the preamble.

by the context.<sup>1</sup> The proper time for urging objections to parties being heard against the preamble is when their counsel or agent first rises to put a question to a witness, or to address any observations to the committee. The counsel for the bill having been heard, and all the witnesses in support of the preamble having been examined, the case for the promoters is closed.

Proceed-  
ings in  
support of  
petitions  
against  
the pre-  
amble.

When petitioners appear against the preamble, their counsel either opens their case or reserves his speech until after the evidence. Witnesses may be called and examined in support of the petitions, cross-examined by the counsel for the bill, and re-examined by the counsel for the petitioners: but counsel can only be heard, and witnesses examined, on behalf of petitioners, in relation to matters referred to in their petitions.<sup>2</sup> It has been ruled that where a petitioner against a railway bill is admitted to be heard on a petition alleging a preferable line, described particularly in his petition, the engineer to be called in support of such line is entitled to produce, prove, and refer to plans and sections of the suggested line, as made by himself.<sup>3</sup> But, of late years, it has not been usual, except in special circumstances, or as arguments against the proposals of the bill, to admit evidence of alternative schemes, which have not been submitted to Parliament as substantive schemes and have not been subject to the usual notices.<sup>4</sup>

Examina-  
tion of  
witnesses.

As a general rule, each witness is to be examined, or cross-examined, throughout, by the same counsel. In the Shrewsbury and Birmingham Railway Bill, 1851, the committee resolved that "they must adhere to the rule that the same counsel should go through with the examination of each witness, unless by agreement between the parties, to be approved by the committee, it should be arranged

<sup>1</sup> Minutes of Committees on opposed Bill, 1856, vol. i. p. 65.

<sup>2</sup> Glasgow and South Western Railway Bill, and South Wales Railway Bill, 1853, Suppl. to Votes, 1853, pp. 720, 1339; Minutes of Committees on opposed bills, 1856, vol. i. p. 56, &c.

<sup>3</sup> Midland Railway (Extension to Otley) Bill; Cork and Macroom, &c., Bill, 1861; Resolutions of general committee on railway and canal bills, 1861; 117 C. J. 267, &c.

<sup>4</sup> Harrow and Rickmansworth Railway Bill, 1874; West Kent Drainage Bill, 1875; Sutton Bridge Docks Bill, 1875; Newport (Monmouthshire) Gas

Bill, 1875; Provisional Order (Thirsk Water) Bill, 1879; Oldham Corporation Bill, 1886; Local Government Provisional Orders (No. 7) Bill, 1889; Bilston Commissioners and Newark and Trent Water Bills, 1890; Paignton Gas Bill, 1894, &c. In the following cases the evidence was admitted: Loughborough Local Board, and Leicester Corporation, Bills (competing), 1886; Airdrie, &c., Water Bill (special circumstances), 1890; Local Government Provisional Orders Bills, No. 13, 1893, No. 5, 1894, No. 16, 1896; Hartlepool Gas, &c. Bill, 1898; Broadstairs Gas Bill, 1902.

otherwise, in order to meet the convenience of counsel." <sup>1</sup> Committees have also resolved that no counsel should be permitted to cross-examine witnesses, who had not been present during the examination-in-chief, or to re-examine unless he had been present during the entire cross-examination; <sup>2</sup> but in 1891, when (for the first time since the years 1847 and 1861) it was sought to make the first part of this rule effective, <sup>3</sup> and the chairman of a committee proposed to enforce it, the proposal was not adopted, nor did it meet with the concurrence of the chairmen of other committees; the latter part of the rule, as to re-examination, has been more closely observed.

When the speeches and evidence in support of petitions against the preamble are concluded, the counsel for the bill replies on the whole case. <sup>4</sup> If the petitioners have not called witnesses or put in evidence, the counsel for the bill has no right to a reply: but in some special cases, where new matters have been introduced by the opposing counsel (as, for example, Acts of Parliament, precedents, or documents not previously noticed <sup>5</sup>), a reply, strictly confined to such matters, has been permitted. Where there are numerous parties appearing on separate interests, the committee will make such arrangements as they think fit for hearing the different counsel. <sup>6</sup> Any documents, or minutes of evidence on bills of a previous session, that may have been referred to the committee (see p. 701), may be commented upon by counsel, and considered by the committee.

When the arguments and evidence upon the preamble have been heard, the room is cleared, and a question is put, "That the preamble has been proved," which is resolved in the affirmative or negative, as the case may be. <sup>7</sup> Where there are competing bills in the same group, the cases are heard together, according to a long-established course of procedure, and the decision of the committee is postponed

<sup>1</sup> Suppl. to Votes, 1852, p. 287.

<sup>2</sup> Suppl. to Votes, 1847, vol. ii. pp. 1457, 1477; Resolutions of general committee on railway and canal bills, 1861.

<sup>3</sup> City and South London Railway Bill, 1891, MS. Minutes of Evidence, 13th March, p. 7; Central London Railway Bill, 1891, ib. 4th March, p. 54.

<sup>4</sup> In 1853, on the Edinburgh, Perth, and Dundee Railway Bill, the committee held that the counsel for the bill was not entitled to a general reply; but that his reply must be confined to the case of the only petitioner who had adduced evidence, Suppl. to Votes, 1853, p. 720.

<sup>5</sup> Great Western Railway, &c., Bill, Suppl. to Votes, 1854, p. 495, &c.

<sup>6</sup> Suppl. to Votes, 1852, p. 288. In 1853, the committee on a group of (Severn Valley) railway bills decided to hear two counsel only on the whole case presented by several bills, Suppl. to Votes, 1853, p. 1031.

<sup>7</sup> In the case of an omnibus bill, or Bill for the authorization of several separate undertakings, it is usual to prove the preamble in sections, a question that "so much of the preamble as relates thereto" being put and decided by the committee with regard to each section.

until after they have heard the evidence in support of all the bills ;<sup>1</sup> and occasionally, where the subject-matter of bills in the same group

<sup>1</sup> It may be convenient to state briefly the procedure followed in recent cases by committees who have had to consider two [or more] competing bills.

(1) The counsel for the first bill,—“Bill No. 1”—opens his case and calls his witnesses, who are subject to cross-examination by the counsel for the second [or the second and third] of the competing bills—“Bill No. 2” [and “Bill No. 3”] and by the counsel for any other parties who appear as petitioners against Bill No. 1.

(2) These petitioners against Bill No. 1 are then heard, their counsel making his speech, and calling the evidence offered in support of their case.

(3) Counsel for Bill No. 2 next opens his case in a statement explanatory of the purposes of his bill, and calls his witnesses who can be cross-examined by the counsel for Bill No. 1 [and for Bill No. 3], and by the counsel for other parties appearing as petitioners against Bill No. 2 ; and

(4) The case of these petitioners against Bill No. 2 is then heard.

[Where there are more than two competing bills :—

(4a) Counsel for Bill No. 3 here opens the case for his bill in a statement explanatory of its purpose, and calls his witnesses, who can be cross-examined by the counsel for Bills No. 1 and 2, and by the counsel for other parties appearing as petitioners against Bill No. 3 ; and (4b) the case of these petitioners against Bill No. 3 is then heard. (4c) Counsel for Bill No. 3 is then heard to sum up in support of his bill as against the other competing bills, and in reply to the evidence adduced in opposition to it.]

(5) Counsel for Bill No. 2 is heard to sum up in support of his bill as against Bill No. 1 [and Bill No. 3], and in reply to the evidence adduced in opposition to Bill No. 2.

(6) Counsel for Bill No. 1 makes his general reply.

(7) The committee give their decisions on the preambles of all the competing bills, and subsequently consider the clauses of the bill or bills of which the preamble is declared to be proved.

Cf. Thames Steamboat Trust Bill and Thames River Steamboat Service Bill (Group D), 1903 ; Cork City Railways, &c., Bill and Cork Link Railways Bill (Group 5), 1906 ; Kingscourt, &c., Railway Bill, Great Northern Railway (Ireland) Bill, and Newry, &c., Railway Bill (Group 5), 1900 ; Derby Corporation, Sheffield Corporation, and Leicester Corporation Water Bills, 1899 (Minutes of Proceedings, Group B, 24th April, 9th May, 7th, 8th, and 9th June, 1899). In the last-named case, the committee, during their consideration of the three bills, were empowered by an instruction of the house (passed on the motion of the chairman of the committee) to consolidate the bills ; and accordingly, having formally passed the preambles of the three bills, they struck out all the clauses, and proceeded to consider a consolidated bill (against which the parties petitioning against all three bills were heard), and to report this consolidated bill (Derwent Valley Water Bill) to the house, 154 C. J. 229. 267. Prior to 1897 it was not the practice to permit the counsel for the second [or third] of two [or more] competing bills to make more than one speech. Cf. the Minutes of Evidence, 11th March, 1897, before the committee on the Highland Railway (Inverness, &c.), Invergarry, &c., Railway, and North British, &c., Railway (three competing bills), Group 5, 1897 ; and the Report of the Select Committee on Private Business, Parl. Pap. (H.C.), sess. 1902, No. 378, p. x. Where the same petition has been presented against all of the competing bills, committees, instead of hearing the petitioners against each of the bills at separate times, have heard them against all the bills after the counsel for the last of the competing bills had made his opening statement and called his evidence, but before he proceeded to sum up his case in reply ; Thames River Steamboat Service Bill and Thames Steamboat Trust Bill (Minutes of Evidence, Group F, 20th April), 1904 ; Invergarry, &c., Railway Bill and North British, &c., Railway Bill (Minutes of Proceedings, Group 5, March 11-22), 1897 ; &c.

has been partly the same, committees have heard the cases separately, but have deferred their decision till after the conclusion of the last case.<sup>1</sup> In some cases, the committee have resolved that the clauses which the promoters had agreed with the opponents to insert in the bill, should be produced before they proceeded to decide on the preamble:<sup>2</sup>

The committee call in the parties and acquaint them with their decision regarding the preamble; and, if the preamble be proved, they then go through the bill clause by clause. Where petitioners appear against a clause, or propose amendments, they are heard in support of their objections or amendments, as they arise; or opposed clauses may be postponed and considered at a later period in the proceedings, if the committee think fit. In accordance with the rules of the house in committee in dealing with a public bill, when all the clauses of the bill have been disposed of, new clauses may be offered either by members of the committee or by the parties.

An alternative clause prepared by petitioners is frequently produced and considered in connection with a clause which is formally before the committee, and which may be amended or negatived in consequence; but if the clause be negatived, the alternative clause strictly should only be added when all the remaining clauses of the bill have been disposed of. Counsel claim the right of reply when they have brought up a new clause: but a distinction should be drawn in this respect between a purely alternative clause and a new clause; such an alternative clause is produced only in support of the argument against, and is virtually an amendment to, a clause already formally before the committee, and it should be treated as an amendment only, without any right of reply; while counsel proposing a new and substantive clause for the consideration of the committee, when no other clause was before it, would not be so limited.<sup>3</sup>

It is at this time also that officers of public departments sometimes appear, to secure the insertion of clauses protective of the property or interests of the Crown, or of navigations, and tidal lands, or

Clauses  
desired by  
public de-  
part-  
ments.

<sup>1</sup> It may be noted that, in considering competing cases, some committees, instead of following the order of procedure indicated in p. 720, n. have considered each bill separately, although deferring their decision on the preambles of each bill until the case on the last bill had been concluded. Cf. Proceedings of the Committees, in the Lords, on the London

Electric Power Bills, 1905, and on the Penllwyn and other Welsh Railway Bills, 1906.

<sup>2</sup> North Metropolitan Railway Bill, Suppl. to Votes, 1854, p. 451.

<sup>3</sup> This rule as to the hearing of counsel on an alternative clause received the assent and approval of the late Mr. Pope, K.C., and the late Mr. Pember, K.C.

otherwise concerning the public interests. But, except in cases in which the consent of the Crown may be withheld from a bill, government departments are without any means of enforcing the adoption of their clauses, either by the parties or the committee; and their relations to the committee and Parliament are often not a little anomalous. It has, indeed, been held that public departments have no right to be heard, except upon petition,<sup>1</sup> but in 1909

<sup>1</sup> Thus, in 1858, the Office of Works and Public Buildings was refused a hearing against the Victoria Station and Pimlico Railway Bill, as the board had not deposited a petition against the bill, by which the promoters might have been made acquainted with the grounds of opposition (Minutes of Committees on Opposed Bills, 1858, vol. i. 130). In 1872 the Treasury obtained the insertion of a clause in the International Communication Bill providing access to Crown property; but on several government departments applying by counsel to the committee to be heard against the bill, the committee decided that it was contrary to the practice of the house to admit parties not appearing in the usual way on petition (Minutes of Group 2. 1872). In 1902 counsel informed the committee on the Commercial Gas Bill that he was instructed to appear before them on behalf of the Board of Trade, and offered to call one of the Gas Referees appointed by that department as a witness; but as there was no petition against the bill from the department or from the Gas Referees, nor any direction from the house with regard to calling them, the committee declined to hear them (Minutes of Evidence, Group A, 13th and 14th March, 1902). In 1871 the Office of Works appeared by counsel on their petition as landowners against the Metropolitan Street Tramway (Westminster and Battersea Park Extension) Bill, and the London Street Tramways (Kensington, Westminster, and City Lines) Bill (Group 12). In 1873, the Postmaster-General petitioned against the Midland Railway Bill, but the petition was afterwards withdrawn. In the same year he also petitioned against the Deal, Walmer, and Adisham Railway Bill, the South Eastern Railway Bill, the North Metropolitan Tramways

Bill, and the London and Aylesbury Railway Bill; and in the two first cases, appearances were entered. (Cf. also the Clapham Junction and Paddington Railway Bill, 1893 (against which the Commissioners of Works appeared in the ordinary way on petition), &c. In some cases leave has been specially given by the house for departments (although they had not presented a petition) to appear by counsel, &c., before the committee on a private bill, e.g. to the Admiralty (South Eastern Railway Bill (Group 17), 1865, 120 C. J. 303; Naval Works Provisional Order Bill (Group O), 1901, 156 ib. 234); to the Board of Trade (North British Railway Tay Bridge Bill (Select Committee), 1880, 135 ib. 317); to the Commissioners of Public Works in Ireland (Canal Rates, &c., Provisional Order No. 11 Bill (Joint Committee), 1894, 149 ib. 301); to the War Office (Lee Conservancy Bill (Group B), 1900, 155 ib. 106). In 1892 the committee on the Manchester, Sheffield, and Lincolnshire Railway (Extension to London) Bill received a letter stating that the Department of Woods and Forests was interested in respect of certain Crown lands which would be prejudicially affected by the bill. The committee, in answer, stated that it would be for the convenience of the committee if a Report from the Department were laid before them, and that they would be prepared to afford the department an opportunity of submitting its views as suggested; and the surveyor to the commissioners accordingly attended for this purpose. And in many cases officers of public departments—the Board of Trade, the Home Office, or the Local Government Board—have attended the committee on a private bill for purposes of reference in connection with their reports on the bill, and in such cases have not been subjected to cross-examination.

a mandatory instruction was given to a specially constituted committee on a railway bill to hear the Board of Trade and any other government department by counsel and witnesses.<sup>1</sup>

It must be borne in mind that the committee may not admit clauses or amendments which are not within the "order of leave" (see p. 633, n. 2); or which are not authorized by a previous compliance with the standing orders applicable to them, unless the parties have received permission from the house to introduce certain provisions, in compliance with petitions for additional provision. But if the committee are of opinion that such provisions should be inserted, the further consideration of the bill can be postponed, in order to give the parties time to petition the house for additional provision (see p. 642).<sup>2</sup> A committee has refused to entertain a clause which the promoters of a bill had agreed upon with another company and proposed to insert in the bill, even when it appeared that the petition of that company had been withdrawn, on condition of the introduction of that clause. In such cases, however, which are of rare occurrence, a committee has consented to the promoters calling witnesses representing the company concerned,<sup>3</sup> or has offered to obtain power from the house to hear the company, notwithstanding the withdrawal of their petition.<sup>4</sup>

A committee has also inserted clauses compelling a railway company, under penalty of a suspension of its dividends, to apply to Parliament in the next session, for a bill to authorize the construction of a line of railway which the company had pledged itself to make.<sup>5</sup> And the preamble of a bill has been negatived,

Enforce-  
ment of  
pledges.

In 1906, however, representations were made to Mr. Speaker, on behalf of the parliamentary bar, as to a growing tendency on the part of private bill committees to hear statements or evidence, tendered by officers from government departments, without permitting these officers to be cross-examined in the same manner as the witnesses called before the committee in the ordinary way (see *infra*, p. 730) by the parties promoting and opposing the bill. Mr. Speaker has laid it down that all official witnesses ought to be subject to cross-examination except when they are called by the committee to speak as to the practice and policy and parliamentary precedent of their department; (Mr. Speaker's Memorandum to the principal Clerk of

Committees).

<sup>1</sup> Great Northern, Great Central and Great Eastern Railways Bill, 164 C. J. 104.

<sup>2</sup> London and North Western (Northampton Branch) Bill, Suppl. to Votes, 1853, p. 964; and *ib.* p. 1255; and Bradford Tramways, &c., Bill, 1899, Suppl. to Votes, p. 1341.

<sup>3</sup> Colne Corporation Bill, 1905 (Minutes of Evidence, Police and Sanitary Committee, 3rd April).

<sup>4</sup> Thames Tunnel Railway Bill, Minutes of Group 2, 1860.

<sup>5</sup> South Western Railway (Capital and Works) Act, 1855; Suppl. to Votes, 1853, p. 945; and *ib.* 1855, p. 251. Cf., in this connection, Report of Select Committee on Railways (Ireland) Amalgamation Bills, 1899, 154 C. J. 373-4.

on proof that it was a violation of a pledge previously given by a company.<sup>1</sup>

Preamble  
of bill not  
proved.

If the proof of the preamble be negatived, the committee report to the house that the preamble has not been proved.

In 1836 the committee on the Durham (South West) Railway Bill were ordered to reassemble, "for the purpose, of reporting specially the preamble, and the evidence and reasons, in detail, on which they came to the resolution that the preamble had not been proved."<sup>2</sup>

It has been ruled that when a committee have resolved that the preamble of a private bill has not been proved, and ordered the chairman to report, it is not competent for them to reconsider and reverse their decision, but that the bill should be recommitted for that purpose.<sup>3</sup> This course, however, of recommitting a bill of which the committee has reported the preamble "not proved" is unusual and requires a strong case to be made out for its adoption.<sup>4</sup> In 1854 the preambles of two out of three competing railway bills were declared not proved: but the successful bill, after it was reported, having been withdrawn, the two other bills were recommitted, and the preamble of one of them was declared to be proved.<sup>5</sup> In 1861, in the case of the Mold and Denbigh Junction Railway Bill, the committee reported that the preamble had not been proved: but all opposition having been subsequently withdrawn, the bill was recommitted to the former committee, who reported the preamble proved, and the bill was passed.<sup>6</sup> In 1874, in the case of the Bolton-le-Sands, Warton and Silverdale Reclamation Bill, the committee having reported that the preamble had not been proved, the bill was afterwards recommitted to the former committee, with an instruction to the committee to strike out of the bill all powers for the compulsory taking of lands, to which any opposition was offered.<sup>7</sup> In 1902, in the case of an *omnibus* bill—the South Eastern and London, Chatham and Dover Railways Bill—the promoters not having been able to accept the provisions suggested by the committee

<sup>1</sup> Mid-Sussex, &c., Railway Bill (Group 3), 1860.

<sup>2</sup> 91 C. J. 396.

<sup>3</sup> Group P, 1853, Suppl. to Votes, p. 957; Shrewsbury and Welshpool Railway Bill, 1858.

<sup>4</sup> Cf. the proceedings in the house on the Piccadilly, City, and North East London Railway Bill, 1902, 113

Parl. Deb. 4 s. 1154.

<sup>5</sup> Group 1, Suppl. to Votes, 1854, pp. 175, 415.

<sup>6</sup> 116 C. J. 285. The Peterborough Water Bill, of 1875, was a similar case where the promoters' claim to a recommitment was conceded, though it was not proceeded with.

<sup>7</sup> 129 C. J. 174, 217, &c.



in one opposed portion, "Railway No. 1," of the bill, the committee reported that the preamble of the whole bill, including other and unopposed portions, was not proved. The bill was thereupon recommitted with an instruction to the committee to reconsider their decision upon so much of the preamble as did not relate to Railway No. 1; and the committee subsequently reported that they had done so and had found the preamble proved except in so far as it related to Railway No. 1.<sup>1</sup> In several other cases, where compromises have afterwards been effected, and the promoters have consented to make amendments, the bills have been recommitted for that purpose.<sup>2</sup> In 1913 the Local Legislation committee decided that so much of the preamble of the East Ham Corporation Bill as related to Part II. which constituted East Ham a county borough was not proved. The chairman in announcing the committee's decision stated that they would welcome the reconsideration of their decision by the House in view of the novelty and importance of the questions raised. The bill was recommitted to the same committee with an instruction to reinsert these provisions, if they thought fit, either with or without modifications, and the committee reinserted the powers asked for.<sup>3</sup> In the same year in the case of the Electric Lighting Provisional Orders (No. 6) Bill [Lords] the promoters decided owing to the lateness of the session not to proceed with one of the orders contained in the bill relating to Kingstown. The committee on the bill reported to this effect, and the house thereupon referred the bill back to them for the purpose of reinstating the Kingstown order, gave them power to divide the bill into two bills dealing with the opposed and unopposed orders respectively, and ordered that the bill for confirming the opposed order should stand referred to the committee of selection.<sup>4</sup>

Where it has appeared that the promoters of a bill were debarred by an agreement from executing the works proposed by it, the committee decided that the bill could not be further proceeded with.<sup>5</sup>

In the Kingstown Township Bill, 1873, while the case for the promoters was proceeding, it was made known that the town

<sup>1</sup> 157 C. J. 306. 314. 330. 343, 110 Parl. Deb. 4 s. 759. And cf. the proceedings on the North Cornwall Railway Bill, 1894, 148 C. J. 103. 108. 121, and Dublin and Central Ireland Electric Power Bill, 1908, 163 ib. 132. 201. 212.

<sup>2</sup> 129 C. J. 225; 132 ib. 177.

<sup>3</sup> 168 C. J. 189. 283. 293, 55 H. C.

Deb. 5 s. 2132, Parl. Pap. (H. C.) sess. 1913, No. 267, pp. iii. xxi. xxvi.

<sup>4</sup> 168 C. J. 305. 337. 354, 56 H. C. Deb. 5 s. 1374.

<sup>5</sup> Devon Central Railways Bill, 1861 (Group 3, Minutes, p. 90); North British Railway (General Powers) Bill, 1881 (Group 12, Minutes, p. 2).

commissioners of Kingstown, by whom the bill was promoted, had been restrained by injunction from proceeding further with the bill, on the ground that they had failed to comply with the requirements of the Towns Improvement Act, 1847 (§s. 132, 133, and 142), and were not therefore entitled to come to Parliament. The commissioners, however, had also signed the petition for the bill, as individuals; and claimed to proceed with the bill in that capacity: but the committee resolved, "That the counsel for the promoters having stated that the commissioners had withdrawn from the promotion of the bill, the committee decided that they ought not to proceed further with the bill, and that they would report to the house that the preamble had not been proved." This decision was founded, it is believed, upon the determination of the committee not to favour any evasion of the Towns Improvement Act, and of the injunction founded upon it.<sup>1</sup> Attempts were afterwards made, without success, to obtain a rehearing, but the committee adhered to their determination.

Alterations in preamble.

Alterations may be made in the preamble, subject to the same restriction as in the case of other amendments, that nothing be introduced inconsistent with the "order of leave," or with the standing orders of the house applicable to the bill. Such amendments, however, are to be specially reported.

Costs awarded in certain circumstances to petitioners against a private bill.

In 1865 the important principle of restraining vexatious litigation by awarding costs was first introduced. Under the Parliamentary Costs Act, 1865. 28 & 29 Vict. c. 27, when a committee (in either House of Parliament) on a private bill shall decide that the preamble is not proved, or shall insert any provision for the protection of any petitioner, or for the protection of such petitioner strike out or alter any provision of the bill, and further unanimously<sup>2</sup> report, with respect to any or all of the petitioners against the bill, that such petitioner or petitioners have been unreasonably or vexatiously subjected to expense in defending their rights, such petitioner or petitioners shall be entitled to recover costs from the promoters.<sup>3</sup>

<sup>1</sup> Group K, 1873 (Minutes, 7th May).

<sup>2</sup> It has been held that the Act has been duly complied with, if all the members of the committee present at the hearing of the case, provided that they form a quorum, have unanimously reported in the manner prescribed for entitling parties to recover costs. (Minutes of the police and sanitary committee

(consisting of nine members, with a quorum of five), Lancaster Corporation Bill, 1888; &c.)

<sup>3</sup> Costs granted to petitioners:—Great Western Railway Bill, 1866 (121 C. J. 328); Brecon, &c., Railway Bill, 1867 (122 ib. 109); Thames Embankment, &c., Bill, 1868 (123 ib. 193); Stockton-on-Tees, &c., Improvement Bill, 1869

On the other hand, when a committee unanimously report that the promoters have been vexatiously subjected to expense by the opposition of petitioners, they shall be entitled to recover costs from those opponents;<sup>1</sup> but it is provided that no landowner who *bonâ fide*, at his own sole risk and charge, opposes a bill which proposes to take any part of his property, shall be liable to any costs in respect of his opposition.

By section 2 of the Parliamentary Costs Act, 1871 (34 and 35 Vict. c. 3), committees (in either house) upon bills for confirming provisional orders may award costs in like manner, and under the same conditions, as in the case of a private bill.<sup>2</sup> In the case, however, of certain provisional orders, granted under the Allotments (Scotland) Act, 1892 (see p. 786), the Public Health (Scotland) Act, 1897 (see p. 782), and the Ancient Monuments Consolidation and Amendment Act, 1913 (see p. 780), and also in the case of a joint committee under the Private Legislation Procedure (Scotland) Act, 1899 (see p. 800), a question of costs is decided by a majority of the committee to whom the confirming bill may be referred.<sup>3</sup>

(121 ib. 150); Great Eastern, &c. (Metropolitan Railways) Bill, 1870 (125 ib. 93); North Eastern Railway (Additional Powers) Bill, 1874 (129 ib. 126); Metropolitan Railway Bill, and North British Railway (General Powers) Bill, 1881 (136 ib. 102, 191); Hull Extension, &c., Bill, 1882 (137 ib. 177); Great Eastern Railway (General Powers) Bill and Swindon, Marlborough and Andover Railway Bill, 1883 (138 ib. 183, 198); Sunderland, &c., Water Bill, and Metropolitan Outer Circle Railway (Extension of Time) Bill, 1891 (146 ib. 161, 390); Dublin Southern District Tramways Bill, 1893 (148 ib. 467); Manchester, Sheffield, and Lincolnshire Railway Bill, 1896 (151 ib. 187); Leeds Corporation Water Bill, 1901 (156 ib. 323); Great Northern Railway (No. 1) Bill, 1902 (157 ib. 197); Oldham Corporation Bill, 1909, 164 ib. 173; Newcastle-upon-Tyne Corporation Bill, 1911, 166 ib. 307. And cf. Dublin Southern Tramways Bill, 1893 (148 ib. 467; and Minutes of Evidence, Group 9, 27th July, 1893).

<sup>1</sup> Costs granted to promoters:—North British Railway (Coatbridge, &c.) Bill, 1866 (121 C. J. 327); Hull Docks Bill, 1867 (122 ib. 108); London, Blackwall, &c., Railway Bill, 1870 (125 ib. 94);

Tivy Side Railway Bill, 1872 (127 ib. 212); Ely and Bury, &c., Railway Bill, 1875 (130 ib. 319); Skegness, &c., Tramways (Abandonment) Bill, 1886 (141 ib. 206); Folkestone, Sandgate, &c., Tramways Bill, 1891, in which case the petitioners had been offered a protective clause by the committee (146 ib. 139; and Minutes of Evidence, Group 2, 5th and 6th March, 1891); Bank of Bolton Bill, 1895 (150 C. J. 231); Buxton Urban District Council Bill, 1902 (157 ib. 275).

<sup>2</sup> Costs granted to petitioners:—Local Government Provisional Orders (Atherton, &c.) Bill, 1877, 132 C. J. 426; Tramways Orders Confirmation (No. 2) Bill, 1878, 133 ib. 258; to promoters:—Electric Lighting Provisional Orders (No. 3) Bill, 1912, 167 ib. 279.

<sup>3</sup> Costs granted to a petitioner:—Ancient Monuments Preservation Order Confirmation (No. 1) Bill, 1914, 146 L. J. 208. Similar powers were given to committees on bills to confirm provisional orders granted under the Allotments Act, 1887 (since repealed), and Parts I. and II. of the Housing of the Working Classes Act, 1890 (see p. 766, n. 5). Costs granted to promoters, Allotments Provisional Order Bill, 1891, 146 C. J. 368.

Or to the promoters of a private bill.

In case of provisional order bills.

The costs awarded by a committee have to be taxed by the Taxing Officer of the house (see Chapter XXXIV.).

Where applications for costs have not been entertained by committees in the Commons.

But although, since 1865, such costs have been awarded in numerous cases, they have more frequently been refused; and in other cases, owing to the circumstances in which it has been made, the application for costs has not been entertained by a committee. In one case, the promoters having informed the committee on a bill, in the Commons, that it was not their intention to proceed with it,<sup>1</sup> a petitioner applied to the committee to report that, the promoters not having adduced evidence, the preamble was not proved, and to consider an application for costs. But the committee determined to report that the parties had stated that it was not their intention to proceed with the bill, and decided that the question of costs could not consequently be entertained.<sup>2</sup>

In 1880, before the committee, in the Commons, upon the Pier and Harbour Provisional Orders Bill, no parties having appeared in support of the Weymouth Pier Order, certain petitioners applied for costs against the promoters; but the committee decided that, as the consideration of the scheme had not been entered upon, the case did not come within the words of the Act as to the granting of costs.<sup>3</sup> And in another case, the only petitioners against a bill

<sup>1</sup> Cf. *infra*, p. 732. (Parties not proceeding with their bill.)

<sup>2</sup> Abbotsbury Railway Bill, 1873. And cf. also Portsea Island Reclamation Bill, 1871. In 1899, in the case of the London and North Western Railway (New Railways) Bill, the committee found that the preamble, in so far as it related to certain railways, was proved, subject to certain terms desired by petitioners; but the promoters, in preference to accepting the conditions imposed, withdrew that portion of the bill, and the committee thereupon acceded to an application for costs made by the petitioners, 154 C. J. 209. And in the case of the Swindon, Marlborough, &c., Railway Bill, 1883, the committee granted costs to petitioners, although the portions of the bill to which they objected had been withdrawn by the promoters, 138 ib. 198. And cf. the Local Government Provisional Orders (No. 15) Bill, 1895, where, on one of the Orders being withdrawn by the parties promoting it, costs were granted to petitioners 150 ib. 330. In the case of

the North Staffordshire Railway Bill, 1879, the promoters, in the filled-up bill, had struck out certain provisions objected to by petitioners, who nevertheless applied for costs; but the committee, whilst deciding that the alterations so made were technically their own, refused the application (Minutes, of Group 4, 14th May, 1879). In 1883, the South Kensington Market Bill was withdrawn in the house on the first day appointed for its consideration by a committee, and parties who had petitioned against it applied for costs; but the committee, not having considered the bill, decided that they had no power to grant costs. A similarly unsuccessful application was made in 1898 by petitioners against the Taff Vale Railway Bill, which was withdrawn by the promoters after the appearances had been entered and parties were in attendance before the committee (Minutes of Group 4, 15th June, 1898).

<sup>3</sup> 34 & 35 Vict. c. 3; and Minutes of Group E, 24th June, 1880.

did not appear before the committee by whom it was considered in the Commons, and the promoters applied for costs against them; but the committee decided that, as the bill had to be referred back as unopposed for consideration by the committee on unopposed bills, they were not in a position to hear evidence in proof of the preamble, nor, consequently, to entertain an application for costs.<sup>1</sup>

Besides the matters, already referred to (see pp. 700–714), which are required by the standing orders of the House of Commons to be reported upon by a committee, there are particular duties of the chairman and of the committee on every private bill (whether opposed or unopposed) as to recording the proceedings of the committee and reporting them to the house, which are also distinctly explained in the standing orders. Thus:—

“Every plan and book of reference thereto, which shall be produced in evidence before the committee upon any private bill (whether the same shall have been previously lodged in the Private Bill Office or not), shall be signed by the chairman of such committee, with his name at length; and he shall also mark with the initials of his name every alteration of such plan and book of reference which shall be agreed upon by the said committee; and every such plan and book of reference shall thereafter be deposited in the Private Bill Office.”

Duties of committee when reporting private bill in the Commons.

Plans, &c., committee bill, and clauses, to be signed by chairman. S. O. 146.

“The chairman of the committee shall sign, with his name at length, a printed copy of the bill (to be called the committee bill), on which the amendments are to be fairly written; and also sign, with the initials of his name, the several clauses added in the committee.”

S. O. 147.

“The chairman of the committee shall report to the house, that the allegations of the bill have been examined; and whether the parties concerned have given their consent (where such consent is required by the standing orders) to the satisfaction of the committee.”

Committee to report on allegations of bill, &c.

“The chairman of the committee shall report the bill to the house, whether the committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them; or where the parties shall have acquainted the committee that it is not their intention to proceed with the bill; <sup>2</sup> and when any alteration shall have been made in the preamble of the bill, such alteration, together with the ground of making it, shall be specially stated in the report.”

S. O. 148. And to report bill in all cases. S. O. 149.

“The minutes of the committee on every private bill shall be brought up and laid on the table of the house, with the report of the bill.” <sup>3</sup>

Minutes of committee.

In some cases, the minutes of evidence taken before the committee on a private bill have been ordered to be also laid before the

S. O. 152. Minutes of evidence.

<sup>1</sup> North Metropolitan Electric Power Supply Bill, 1905; Group L (Minutes of Evidence, 6th July). In the Lords—by an express provision in the standing orders—the committee are not precluded from requiring proof of the preamble

of a bill against which parties have not appeared, should an application for costs be made (see standing order 102 of that house).

<sup>2</sup> Cf. *infra*, p. 732.

<sup>3</sup> Cf. *infra*, p. 736, note 9.

house; and, on being presented, have been printed at the expense of the house,<sup>1</sup> or have been referred to the committee on other private bills of the same session.<sup>2</sup> In certain cases the minutes of evidence on a private bill have been ordered to be printed at the expense of the parties, if they think fit.<sup>3</sup> On the 16th February, 1864, the house resolved, "That the minutes of evidence on opposed private bills be printed at the expense of the parties, whenever copies of the same shall be required."<sup>4</sup> The promoters of an opposed private bill are now required to print the evidence and to supply a copy of the print to the Committee and Private Bill Office.<sup>5</sup>

Witnesses  
before  
private  
bill com-  
mittees.  
Summons.

The attendance of witnesses before select committees has already been noticed (see p. 522). The power given to those committees of sending for persons, papers, and records, is not, however, entrusted to committees on private bills.<sup>6</sup> The parties are generally able to secure the attendance of their own witnesses, without any summons or other process, and a large proportion of all the witnesses examined attend professionally. But when it becomes necessary to compel the attendance of an adverse or unwilling witness, or of any official person who would otherwise be unable to absent himself from his duties, application is made to the committee, who, when satisfied

<sup>1</sup> South London Docks Bill, 1824, 79 C. J. 445, 449, and *infra*, p. 732, n. 2. In this case leave was given to the committee, on the motion of the chairman, to lay the minutes of evidence before the house. Cf. also the Norwich, &c., Navigation Bill, 1826, 81 C. J. 343, 355; Clarence Railway Bill, 1843, 98 ib. 263; Oxford, Worcester, &c., Railway Bill, 1845, 100 ib. 554, 566; Devon and Dorset Railway Bill, 1853, 108 ib. 637, 644; and 110 ib. 6. For orders made for printing evidence in the case of private bills specially referred to select committees, see the Metropolis (Subways) Bills, 1867, 122 C. J. 409, 413; the Metropolitan Board of Works (Shoreditch, &c.) Bill, 1871, 126 ib. 118, 120; the Lambeth and other Water Transfer Bills, 1895, 150 ib. 325, 326; and United Methodist Church Bill, 1907, 162 ib. 250, 362.

<sup>2</sup> Newcastle, &c., Railway, and Northumberland Railway, Bills, 1845, 100 C. J. 521, 535, 536; and see *supra*, p. 701, note 2.

<sup>3</sup> Aberdeen Schools, &c., Bill, 1836, 91 C. J. 338; Dean Forest Railway Bill,

1843, 98 ib. 324; British Electric Telegraph Company Bill, 1852, 107 ib. 357.

<sup>4</sup> 119 C. J. 71. In the case of "hybrid" bills, to which this resolution does not extend, special leave has to be given for the parties "to print the minutes of evidence day by day, from the committee clerk's copy, if they think fit," Metropolis Water Bills, 1851, 1852, 106 ib. 315, and 107 ib. 141; Metropolis Management and Building Acts Amendment Bill, 1878, 133 ib. 104; Post Office Sites Bill, 1889, 144 ib. 423, &c. A similar order has also sometimes been made in the case of opposed private bills referred to specially constituted committees, London Streets and Buildings Bill, 1894, 149 C. J. 169; South Eastern and London, Chatham, and Dover Railway, &c., Bill, 1899, 154 ib. 143.

<sup>5</sup> Mr. Speaker's order, 2nd April, 1912.

<sup>6</sup> In 1896 a motion to give a private bill committee this power was made but was withdrawn, London County Council (Vauxhall Bridge Tramways) Bill, 151 C. J. 68-9.

that due diligence has been used, that the evidence of the witness is essential to the inquiry, and that his attendance cannot be secured without the intervention of the house, direct a report to that effect to be made to the house; <sup>1</sup> upon which an order is made for the witness to attend and give evidence, <sup>2</sup> or to attend and produce particular documents, <sup>3</sup> before the committee.

By the Parliamentary Witnesses Oaths Act, 1871, any committee of the House of Commons is empowered to administer an oath to witnesses examined before it; <sup>4</sup> and witnesses before private bill committees are examined on oath. In one case the committee made a special report stating that, in their opinion, a witness had been guilty of perjury. <sup>5</sup>

If matters should arise in the committee, apart from the immediate consideration of the bill referred to them, <sup>6</sup> which they desire to report to the house, the chairman should move that leave be given to the committee "to make a special report." <sup>7</sup> The house may also

Examination upon oath.

Special reports from private bill committees.

<sup>1</sup> This report for the attendance of a witness on an opposed bill is made by the Chairman of Ways and Means in cases where the committee on the bill has not yet met, 156 C. J. 78. 121. 128; &c., or has adjourned 154 ib. 265; 155 ib. 290; 160 ib. 288; &c.

<sup>2</sup> 126 C. J. 228 (for attendance of a prisoner); 127 ib. 99; 137 ib. 101; 156 ib. 78; 155 ib. 290; 160 ib. 61. 292; &c.

<sup>3</sup> 129 C. J. 98; 137 ib. 369. 374; 151 ib. 149. 188; 153 ib. 145. 159; 154 ib. 97; 155 ib. 195-6; &c.

<sup>4</sup> 34 & 35 Vict. c. 83; and see *supra*, p. 526. Committees of the House of Commons had been previously empowered, by s. 1 of the Act 21 & 22 Vict. c. 78, to administer an oath to witnesses upon a private bill, and, by s. 3 of the Act 34 & 35 Vict. c. 3, to witnesses upon a provisional order bill. Both of these sections were rendered unnecessary, and were repealed, by the Parliamentary Witnesses Oaths Act, 1871. As to the power of committees in the Lords to administer oaths, see s. 2 of the Act 21 & 22 Vict. c. 78, and *infra*, p. 749.

<sup>5</sup> 115 C. J. 230.

<sup>6</sup> Cf. also *supra*, p. 439, as to special reports from select committees.

<sup>7</sup> Special reports from committees on opposed private bills:—Concerning the constitution of one public body as dock

trust (Liverpool Docks, Birkenhead, &c., Docks Bill, 1855, and Mersey, &c., Docks Bill, 1857), 110 C. J. 298, and 112 ib. 267. 269; concerning parliamentary deposits, 120 ib. 285. 303; as to forged signatures, 134 ib. 176; recommending legislation or inquiry upon particular questions, 150 ib. 119, and 159 ib. 268; as to electrical traction (tramways) in London, 153 ib. 281; as to electrical undertakings and Board of Trade, 157 ib. 183, &c. In the case of the Devon and Dorset Railway Bill, 1853, the committee made a special report, explaining that they had rejected that bill in expectation of a preferable line of railway being proposed to Parliament, in the next session, by another company, 108 C. J. 637. And for examples of other special reports from private bill committees, as to their treatment of a bill, or as to special circumstances, &c., see 108 C. J. 709; 126 ib. 199; 127 ib. 195; 133 ib. 238; 156 ib. 307; 157 ib. 447; 158 ib. 178; 161 ib. 286; 166 ib. 74. 253, and *supra*, p. 652 (Manchester, Sheffield, &c., Railway Bill, 1891).

Where a private bill has been referred to a select committee, who are empowered to send for persons, papers, and records, the motion for leave to make a special report is not necessary. Nor has it been made, in recent years, in the case of special reports from the Committee on

instruct the committee on a private bill to make a special report.<sup>1</sup>

Report  
that  
"Parties  
do not  
proceed,"  
&c.

If parties acquaint the committee that they do not desire to proceed further with the bill,<sup>2</sup> this fact is reported to the house; and an order is then made that the bill be withdrawn<sup>3</sup> or, merely, that the report do lie upon the table.<sup>4</sup> In 1902 a committee having thus reported that the parties did not intend to proceed with their bill, notice was given of a motion to recommit the bill; but Mr. Speaker ruled that such a motion would be out of order, on the ground that a private bill was the property of the promoters and that the house could not compel them to proceed with it against their wish.<sup>5</sup>

After the preamble of a bill has been proved, the promoters have

Unopposed Bills: cf. Keble College Bill, 1888, 143 C. J. 141 (in which case the Chairman of Ways and Means held that his power, under standing order 83, to report special circumstances enabled him to present a special report from the Committee without a motion for leave to do so); and Abensur's Naturalization Bill, 1896, 151 C. J. 383; and Guy's Hospital Bill, 1898, 153 ib. 156.

In 1846, in the case of the Edinburgh and Leith Waterworks Bills, the committee reported, that in view of special circumstances which they submitted to the house, the consideration of both bills should be suspended, in order to afford opportunity for the introduction of another bill; and they recommended, "That every facility, consistent with the forms of the house, should be given to such a bill during the present session," 101 C. J. 732.

In 1899 a select committee on certain Irish Railway Amalgamation Bills made a special report recommending that, owing to the late period of the session, a bill should be withdrawn although the promoters were ready to proceed with it, 154 C. J. 373-4. 377.

<sup>1</sup> The case of the London and Brighton Railway Bills of 1837 was of a very unusual character, and deserves particular notice. The bills for making distinct lines of railway to Brighton had been referred to the same committee, when an unprecedented contest arose among the promoters of the rival lines, and at length it was apprehended that the preamble of each bill would be negatived, in suc-

cession, by the combination of three out of the four parties against each of the lines in which the three were not interested, and on which the committee would have to determine separately. This result was prevented by an instruction to the committee "to make a special report of the engineering particulars of each of the lines, to enable the house to determine which to send back for the purpose of having the landowners heard and the clauses settled." This special report was made accordingly; but the house, being unable to decide upon the merits of the competing lines, agreed to address the Crown to refer the several statements of engineering particulars to a military engineer. On the report of the engineer, appointed in answer to this address, the house instructed the committee to hear the case of the landowners upon the line called the Direct line, 92 C. J. 356. 417. 519. 529.

<sup>2</sup> In 1824 a report was made that from the protracted examination of witnesses, the promoters of the South London Docks Bill desired leave to withdraw their bill, and that the committee had instructed the chairman to move for leave (which was accordingly given) to lay the minutes of evidence before the house, 79 C. J. 445. 449.

<sup>3</sup> 105 C. J. 510; 131 ib. 372.

<sup>4</sup> 129 C. J. 98; 149 ib. 184; 157 ib. 443; 159 ib. 97. 123; &c.

<sup>5</sup> London United Electric Railway Bill, 157 C. J. 443, and Mr. Speaker's private ruling 29th October, 1902. See also 150 Parl. Deb. 4 s. 329; and *supra*, p. 608.



abandoned the bill rather than consent to the introduction of amendments insisted upon by the committee.<sup>1</sup>

It is the duty of every committee to report to the house the bill that has been committed to them, and not by long adjournments to withhold from the house the result of their proceedings; and therefore it has been prescribed by standing order that every committee on an opposed private bill shall report specially to the house the cause of any adjournment over any day on which the house shall sit.<sup>2</sup> If any attempt of this nature be made to defeat a bill, the house will interfere to prevent it. Thus, in 1825, the committee on a private bill having adjourned for a month, was "ordered to meet to-morrow, and proceed on the bill;"<sup>3</sup> and again, on the 23rd March, 1836, the house being informed that a committee had adjourned till 16th May, ordered them "to meet to-morrow, and proceed on the bill."<sup>4</sup>

All bills to be reported. S. O. 149.  
And adjournment of committees on opposed bills to be reported. S. O. 126.

If a committee adjourn, without naming another day for resuming their sittings; or if, from the absence of a quorum, the committee be unable to proceed to business or to adjourn to a future day, they have no power of reassembling without an order from the house, giving the committee leave to sit and proceed on a certain day.<sup>5</sup>

Committees revived.

In the case of a private bill that has been referred, in departure from the ordinary procedure, to a select committee nominated (like the committee on a "hybrid" bill) partly by the house and partly by the committee of selection, or otherwise specially constituted (see pp. 665-666), the proceedings are generally similar to those of ordinary private bill committees.<sup>6</sup> But in such a committee, the chairman—in accordance with a resolution of the house of 25th March, 1836,

Proceedings in the case of private bills before select committees.

<sup>1</sup> Glasgow Waterworks Bill, 1848 (Minutes, p. 97); Plymouth Corporation Bill, 1903 (in House of Lords), &c. And for a case where the promoters of an omnibus bill decided not to proceed with one portion of which the committee had found the preamble proved subject to conditions, see London and North Western &c. (New Railways) Bill, 1899, 154 C. J. 209.

<sup>2</sup> Cf. e.g. Reports of Adjournments, 146 C. J. 371; 156 ib. 96; 157 ib. 83. 188; 160 ib. 81; &c.

<sup>3</sup> 80 C. J. 474.

<sup>4</sup> 91 C. J. 195. Cf. also the debate on the instruction, directing the committee on the Manchester Ship Canal Bill to

report the bill before a specified day, 142 C. J. 292, 316 H. D. 3 s. 24-34.

<sup>5</sup> 105 C. J. 201 (Minutes of Committee on Tyne Navigation, &c., Bills, 18th March, 11th April, 1850); 106 ib. 280; 157 ib. 400. 440 (Group 12, 31st July and 20th October, 1902). As to leave given to committees to sit on a day on which the house is not sitting, see *supra*, "Select Committees," p. 435; and 152 C. J. 337 (leave given to committee on Group 9, 1897, to sit on a Saturday), &c.

<sup>6</sup> Such committees, in common with private bill committees, have the power of examining witnesses on oath (*supra*, pp. 526. 731).

and with the established rules of Parliament regarding select committees (see p. 493)—can only vote when there is an equality of voices,<sup>1</sup> and its members do not sign the declaration required by standing order No. 117 (see p. 662), nor are they subject to the requirements of the standing orders as to attendance on private bill committees<sup>2</sup> (see p. 670). The practice of referring bills of a certain class, already mentioned, to committees so constituted, has of late years greatly increased. There are advantages attaching to such committees; but, on the other hand, the judicial character of the tribunal is impaired by the absence of those regulations by which the continuity and impartiality of the tribunal are preserved.<sup>3</sup>

Every private bill as amended in committee to be printed and delivered.

S. O. 214.

Bills with- drawn or referred to examiner after re- port.

When the report has been made out and agreed to by the committee, the committee clerk delivers in to the Committee and Private Bill Office "the committee bill," being a printed copy of the bill with the written amendments made by the committee, and with every clause added by the committee regularly marked in those parts of the bill in which they are to be inserted. In strict conformity with this authenticated copy, the bill, as amended by the committee, is required by the standing orders to be printed at the expense of the parties. When printed, such bills must be delivered to the Vote Office, for the use of members, three clear days at least before the consideration of the bill, but not before the report of the bill has been made to the house; and agents, when they give notice at the Committee and Private Bill Office, of the day for the consideration of the bill, must produce a certificate from the Vote Office of the delivery of the amended printed bill on the proper day.<sup>4</sup>

In some cases, the alterations made by the committee have been so numerous and important, as almost to constitute the bill a different

<sup>1</sup> This does not apply to the local legislation committee (see p. 714).

<sup>2</sup> In 1900, when certain electric power bills were specially committed to a select committee of seven members, nominated by the committee of selection, an order was made by the house that the committee should be subject to the standing orders relative to the proceedings of committees on opposed bills (except that fixing the number of members), 155 C. J. 101, 80 Parl. Deb. 4 s. 206. 900. 1053-59.

<sup>3</sup> In the committee on Southampton Docks Bill, 1892, one member was a director of the dock company, and another held shares in the South Western

Railway Company (the purchasing company): but it was decided by the authorities of the house that the constitution of the committee was perfectly regular. In the case of the London County Council (General Powers) Bill, and London Improvements Bill, 1893, a member of the London County Council was a member of the committee on both bills, see debate on the latter bill, 14 Parl. Deb. 4 s. 30. 33-29. Cf. also the debate regarding the committee on Electric Power Bills, 1900, 80 Parl. Deb. 4 s. 1053-59.

<sup>4</sup> Order of the Clerk of the House, 30th March, 1844.

measure from that originally brought before the house. In such cases, the house has sometimes required the bill to be withdrawn, and another bill presented, which has been referred to the Examiners. Thus, on the 21st May, 1849, on the report of the Holme Reservoirs Bill, notice being taken that almost the whole of the bill as brought in had been omitted, and a new set of clauses introduced, the bill was ordered to be withdrawn.<sup>1</sup> But, unless the case be one of great irregularity, the later and better practice has been to refer the bill, as amended, to the Examiners, "to inquire whether the amendments involve any infraction of the standing orders."<sup>2</sup> If the Examiner reports that there is no infraction of the standing orders, the bill proceeds without further interruption: but if he reports that there has been such an infraction, his report, together with the bill, will be referred to the standing orders committee who report whether the standing orders ought or ought not to be dispensed with.<sup>3</sup>

In some cases private bills, reported from a committee, have been recommended; and, unless the house has otherwise directed, the recommended bill has stood referred, in the ordinary way, to the

Cases of  
recommen-  
tal of a  
private  
bill.

<sup>1</sup> 104 C. J. 320. 382.

<sup>2</sup> As to the case of a provisional order bill referred as amended to the Examiners, see 156 C. J. 302. 307. 318; and *infra*, p. 789, n. 3.

In the case of hybrid bills similar motions, to refer the bill as amended in committee to the Examiners, have been made. In the case of the Smithfield Market Bill, 10th July, 1860, such a reference was refused, 115 C. J. 370. In the case of the Metropolitan Cattle Market Bill, 1868, it was granted, 123 ib. 223. In the case of the Toll Bridges (River Thames) Bill, 1876, the bill underwent so many important alterations in committee as to be substantially a new bill, and its opponents urged that it ought to be withdrawn. But the second reading of the bill had been postponed, while a select committee was considering the whole subject-matter of the bill; and when that committee had reported, the bill was read a second time and committed; and the report of the committee (together with other reports upon the same subject), was referred to the committee on the bill. These proceedings were regarded by the committee as in the nature of an instruction, and amendments had therefore been made,

of a comprehensive character, founded upon previous inquiries and recommendations. Under these exceptional circumstances, the Speaker suggested that the house would probably consider that the committee had not so far exceeded its powers as to require the withdrawal of the bill. But as private rights and interests were concerned in the bill, and in the amendments made by the committee, he recommended that it should be referred to the Examiners. This was accordingly done; and though it appeared that in respect of some of the amendments the standing orders had not been complied with, the standing orders committee reported that they ought to be dispensed with; and the bill was allowed to proceed through all its further stages, 131 C. J. 354, &c., 230 H. D. 3 s. 1679; Mr. Speaker Brand's Note-book; and see *supra*, pp. 376. 439.

<sup>3</sup> Dublin Central Tramways Bill, 1877, 132 C. J. 366. 378. 399; and Milford Docks Bill, 1874, 129 ib. 141. 142. 153 (in which case the bill was referred with an instruction to the Examiners to report whether a specified standing order had been complied with, in reference to clauses inserted in committee).

committee of selection.<sup>1</sup> Usually, however, when any private bill is recommitted, it is referred specifically "to the former committee;"<sup>2</sup> and no member can then sit, unless he had been duly qualified to serve upon the original committee on the bill.<sup>3</sup> In some exceptional cases a private bill has been recommitted to a committee of the whole house,<sup>4</sup> or to a select committee nominated partly<sup>5</sup> or entirely<sup>6</sup> by the house. Unless the bill be recommitted by the house with express reference to particular provisions,<sup>7</sup> the whole bill is open to

*S. O. 236.* reconsideration in committee.<sup>8</sup> By standing orders Nos. 236 and 237. (see p. 667), one clear day's notice is to be given in the Committee and Private Bill Office of the meeting of the committee on a recommitted bill; and a filled-up bill, as proposed to be submitted to the committee, on recommitment, is to be deposited by the agent in the same office, two clear days before the meeting of the committee.

By standing order No. 213—

Proceedings on and after report of private bill.

*S. O. 213.*

"the report upon every private bill shall lie upon the table; and every such bill, if amended in committee, or a railway or a tramway bill, shall be ordered to lie upon the table; but if not amended in committee, and not a railway or a tramway bill, it shall be ordered to be read a third time."

The bill reported to the house is a copy of the bill as amended in committee. The report upon a railway or tramway bill, or upon a bill promoted by a local authority, an estate bill, a bill upon which an instruction has been given by the house or a report made by a government department, is ordered to be printed, and is made available to members who apply for it. Tramroad and subway bills are treated as railway bills. The minutes of proceedings of committees are also sometimes ordered to be printed.<sup>9</sup>

<sup>1</sup> Dublin Corporation Bill, 1896, 151 C. J. 406. 409, and see *supra*, p. 656. In this case the minutes of evidence before the former committee were referred to the committee on the recommitted bill.

<sup>2</sup> See p. 724 for cases in which bills have been recommitted for the reconsideration of the committee's decision.

<sup>3</sup> Leave has been given in some such cases, for the committee to sit and proceed with two members, 142 C. J. 166; 149 ib. 278, or with a quorum of two, 111 ib. 256. On the Warrington, &c., Railway (recommitted) Bill, 1853, the committee had leave to proceed with three members, but another was afterwards added by the House, 108 C. J. 690. 698.

<sup>4</sup> Sheffield Corporation Bill, 1900, 155

C. J. 358. "Farmer's Estate Society (Ireland) Bill, 1848, 103 ib. 782. And see *supra*, p. 602, note 3; and p. 643.

<sup>5</sup> Lochearnhead, &c., Railway Bill, 1897 (recommitted to a select committee nominated partly by the house and partly by the committee of selection), 152 C. J. 223-4, and *supra*, p. 651, note 4.

<sup>6</sup> 156 C. J. 374. 381. 389; 162 ib. 416. 422.

<sup>7</sup> Tyneside Tramways, &c., Bill, 1904, 159 C. J. 278; Corporation of London (Bridges) Bill, 1911, 166 C. J. 272.

<sup>8</sup> 140 C. J. 351; 142 ib. 166; 144 ib. 172; 156 ib. 192; &c.

<sup>9</sup> Regent's Canal and Railway Bill, 1882, 137 C. J. 254.

In the case of private bills ordered to lie upon the table three clear days are required to intervene between the report and the consideration of the bill.

Three clear days, at least, before the consideration of the bill, a copy of the bill, as amended in committee, is to be laid by the agent before the chairman of ways and means and the counsel to the Speaker, and is also to be deposited with the public departments mentioned in standing order No. 84, and "no consideration of any such bill shall take place, unless the chairman of the committee of ways and means shall have informed the house, or signified in writing to Mr. Speaker, whether the bill contain the several provisions required by the standing orders." <sup>1</sup>

Interval between report and consideration of bill.

S. O. 215.

Bill as amended laid before chairman of ways and means.

S. O. 84. 215.

One clear day's notice, in writing, is required to be given by the agent for the bill, to the clerks in the Committee and Private Bill Office, of the day proposed for the consideration of every private bill ordered to lie upon the table.

Notice of consideration of bill.

S. O. 239.

When it is intended by the promoters or opponents to bring up any clause, or to propose any amendment on the consideration of any bill ordered to lie upon the table—or any verbal amendment on the third reading,—notice is to be given, in the Committee and Private Bill Office, one clear day previously. The clause or amendment, when offered by a party promoting or opposing a bill, is to be printed; and when any clause is proposed to be amended, it is to be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom in brackets, and underlined.<sup>2</sup> And on the day on which notice is given, the clause or amendment is to be laid before the chairman of ways and means and the counsel to Mr. Speaker. But if any clause or amendment be proposed by a member, independently of the parties concerned in the bill, he may either give notice in the votes, as in the case of a public bill, or in the Committee and Private Bill Office. No clause or amendment may be offered on the consideration of a bill, and no verbal amendment on the third reading, unless the chairman of

Rules as to amendments proposed to be moved on consideration, &c., of private bill.

S. O. 242.

Clauses or amendments to be printed.

S. O. 217. 85.

When proposed clauses or amendments are

<sup>1</sup> In 1901 the question "that the Derwent Valley, &c., Bill be now considered" was amended before being agreed to, by the insertion of words, moved by the chairman of ways and means, calling attention to the fact that the committee on the bill, contrary to standing order No. 173A, had allowed a longer period than

sixty years for the repayment of a loan, 156 C. J. 158, 93 Parl. Deb. 4 s. 572-580. Cf. also *supra*, p. 712, note 2 (Sheffield Corporation, &c., Bill, 1887).

<sup>2</sup> The expense of printing is borne by the party offering the clause or amendment.

referred to standing orders committee. S. O. 216. 218. 97. ways and means has informed the house, or signified in writing to Mr. Speaker, whether, in his opinion, it be such as ought (or ought not) to be entertained by the house, without referring it to the standing orders committee. If a clause or amendment referred to the standing orders committee, there can be no further proceeding until their report has been brought up. When the clause or amendment has been offered on the consideration of the bill, they report whether it should be adopted by the house or not, or whether the bill should be recommitted. If a verbal amendment be offered on the third reading, they merely report whether it ought (or ought not) to be adopted by the house at that stage.

Consideration of private bill.

On the consideration of a private bill<sup>1</sup> the house may introduce new clauses or amendments, subject to the restrictions imposed on such amendments by the standing orders just described, by the practice of the house regarding charges upon the people (see p. 505), and by standing order No. 41 (Public Business) (see p. 380), which is applicable to private as well as to public bills and provides that, upon the report stage of any bill,

*"no amendment may be proposed, which could not have been proposed in committee without an instruction from the house."*<sup>2</sup>

Debate on consideration and third reading.

Debate on the question for consideration of a private bill, as reported from a committee, or for its third reading has been confined by rulings from the chair within narrower limits than the debate on second reading. Not only have attempts to raise questions of general policy been ruled out of order as on the second reading<sup>3</sup> (see p. 646, n. 1), but the tendency has also been to restrict debate on the later stages to the matters contained in the bill.<sup>4</sup> Thus a motion to recommit a bill with reference to matters outside its scope

<sup>1</sup> A private bill, unlike a public bill (see p. 379), is considered, as amended, on question put, and to this question amendments may be moved, e.g. to secure the consideration of the bill on a later day or its recommitment.

<sup>2</sup> On the 4th August, 1893, on consideration of the Blackrock and Kingstown Drainage, &c., Bill, it was sought to insert clauses—altering the elective franchise, and not cognate to the bill—which, under the restrictions imposed by standing order, could not be moved on consideration. A motion was thereupon

made and carried, recommitting the bill to the former committee, with a mandatory instruction to insert clauses for this purpose.

<sup>3</sup> 32 Parl. Deb. 4 s. 1605; 97 ib. 1312.

<sup>4</sup> 32 Parl. Deb. 4 s. 705; 33 ib. 781; 17 H. C. Deb. 5 s. 1273; 18 ib. 276; 19 ib. 1844. 1847; 60 ib. 1116. 1119. 1124. For similar rulings on consideration of bills introduced under the Private Legislation Procedure (Scotland) Act, 1899; see 198 Parl. Deb. 4 s. 443; 19 H. C. Deb. 5 s. 1855.

has been refused,<sup>1</sup> while new clauses and amendments have been held to be out of order on the same ground.<sup>2</sup>

When amendments are made by the house on the consideration of a bill, or verbal amendments on the third reading, and also when Lords' amendments have been agreed to, they are entered by one of the clerks in the Committee and Private Bill Office, upon the printed copy of the bill, as amended in committee. This copy, as amended, is signed by him, and preserved in the office. Entry of amendments on report or third reading; and Lords' amendments. S. O. 244.

One clear day's notice, in writing, is required to be given by the agent for the bill, to the clerks in the Committee and Private Bill Office, of the day proposed for the third reading; and this notice may not be given until the day after the bill has been ordered to be read the third time. If necessary, on the order being read for the third reading, the bill may be recommitted.<sup>3</sup> Notice of third reading of private bill. S. O. 243.

On the third reading, verbal amendments only may be made (see p. 384), and, in other respects, this stage is the same as in the case of public bills; the house finally approves of the entire bill, with all the alterations made since the second reading, preparatory to its being passed and sent up, or returned, to the House of Lords (see p. 386). Third reading of private bill. S. O. 219.

This is usually the stage at which the King's consent is signified to any bill affecting the property or interests of the Crown, or Duchy of Lancaster; and the consent of the Prince of Wales, as Duke of Cornwall, or, if he is not of age, of the King on his behalf.<sup>4</sup> On the 20th of April, 1852, notice being taken that her Majesty's interest was concerned in the Rhyl Improvement Bill, and that her consent had not been signified thereto, the proceedings on the third reading of the bill, on a previous day, were ordered to be null and void.<sup>5</sup> King's consent.

No private bill is permitted to be sent up to the House of Lords, until a certificate is endorsed on the fair printed bill, and signed by the proper officers, declaring that such printed bill has been examined, and agrees with the bill as read the third time. Bill examined before being sent to the Lords. S. O. 245.

If the bill be subsequently returned from the Lords with amendments, notice is to be given, in the Committee and Private Bill Office, one clear day before they are to be considered, and if any amendments are intended to be proposed thereto, a copy of such Lords' amendments. S. O. 246.

<sup>1</sup> 19 H. C. Deb. 5 s. 1842.

<sup>2</sup> 353 H. D. 3 s. 555.

<sup>3</sup> 106 C. J. 202. 209; 152 ib. 324; 166 ib. 272.

<sup>4</sup> 100 C. J. 513; 132 ib. 245; 155 ib.

263, &c.

<sup>5</sup> 107 C. J. 157. See Blackwater (Youghal) Wooden Bridge Bill, 1866, 121 ib. 423.



amendments is to be deposited; and no such notice may be given until the day after that on which the bill has been returned from the Lords. Copies of such amendments are also to be laid before the chairman of ways and means and the counsel to Mr. Speaker, before two o'clock on the day previous to that on which they are to be considered. And as the Lords' amendments may relate to matters which might be construed to involve an infringement of the privileges of the Commons, and the amendments proposed to them may be in the nature of consequential amendments (see p. 388), the Speaker's sanction must be obtained before they are proceeded with.<sup>1</sup> Before Lords' amendments are taken into consideration, they are printed at the expense of the parties, and are made available for the use of members, and where a clause has been amended or a Lords' amendment is proposed to be amended, it is printed *in extenso*, with every addition or substitution in different type, and omissions included in brackets and underlined.

If any amendment be proposed to the Lords' amendments, involving a charge upon the people, it is committed to a committee of the whole house.<sup>2</sup> In the case of the Great Northern Railway (Isle of Axholme Extension) Bill, the Lords' amendments were referred to a committee nominated by the committee of selection.<sup>3</sup> In other cases, the Lords' amendments have been recommitted, or referred, to the former committee by whom the bills had been considered.<sup>4</sup>

In case a bill should not be proceeded with in the Lords, in consequence of amendments having been made which infringe the privileges of the Commons, the same proceedings are adopted as in the case of a public bill, and the bill is laid aside.<sup>5</sup> A committee is appointed to search the Lords' Journals, of which previous notice is to be given by the agent in the Committee and Private Bill Office; and on the report of the committee, another bill (No. 2) will be ordered, including the amendments made by the Lords.

<sup>1</sup> Towards the end of the session the consideration of Lords' amendments is expedited by the suspension of standing orders 220 and 246 for the remainder of the session, 156 C. J. 400, &c. For a similar order in the case of an individual bill, see 170 C. J. 123.

<sup>2</sup> Ulverstone, &c., Railway Bill, and Manchester Improvement Bill, 1851, 106 C. J. 358. 398; Christchurch, &c., Tithe Bill, 1878, 133 ib. 409.

<sup>3</sup> 103 C. J. 790.

<sup>4</sup> Salford Improvement Bill, 1862, 117 C. J. 360; Great Eastern Railway Bill, 1867, 122 ib. 337.

<sup>5</sup> Cf. the Provident Life Assurance Company Bill, and the Imperial Fire Assurance Company Bill, 1889 (which, as brought from the Lords, contained clauses dealing with the stamp duty), 144 C. J. 304. 316. See also pp. 274. 509. 510 and p. 511, n.



Every stage of a private bill in the Commons has now been described, with the several standing orders and proceedings applicable to each. In conclusion, it may be added: 1. "That no private bill may pass through two stages on one and the same day, without the special leave of the house;" and 2. "That, except in cases of urgent and pressing necessity, no motion may be made to dispense with any sessional or standing order of the house, without due notice thereof."

No bill to pass through more than one stage in a day.

S. O. 223.

Motions to dispense with standing orders.

In the case of some bills—more especially those that are brought from the other house at a late period of the session—it has been found necessary to suspend the standing orders and to permit them to proceed without the usual intervals and notices.

S. O. 224.

Standing orders suspended.

Where a dissolution of Parliament is anticipated before the private business of the session has been disposed of, it has been customary for both houses to make orders enabling the promoters of private bills and provisional order bills to suspend further proceedings, and to afford facilities for their proceeding further with the same bills in the next session.<sup>1</sup> In a similar manner orders have also been made, late in a session, in order that particular bills might be suspended and proceeded with in the next session of the same Parliament.<sup>2</sup>

Suspension of bills till following session.

<sup>1</sup> 1859, 91 L. J. 176, 207 (8th and 14th April), and 114 C. J. 165 (11th April); 1880, 112 L. J. 102 (16th March), and 135 C. J. 95 (11th March); 1886, 118 L. J. 291 (21st June), and 141 C. J. 280 (17th June); 1892, 124 L. J. 351 (21st June), and 147 C. J. 379 (20th June); 1895, 127 L. J. 253 (4th July), and 150 C. J. 312 (2nd July); 1910, 132 L. J. 307 (23rd November), and 165 C. J. 307 (22nd November). When the time available in the first session of the new parliament has not sufficed for the consideration of the suspended private bills, they have been further suspended until the following session, 1886, 118 L. J. 378 (20th September), and 141 C. J. 380 (20th September); 1892, 124 L. J. 406 (9th August), and 147 C. J. 416 (9th August); 1895, 127 L. J.

298 (19th August), and 150 C. J. 346 (16th August).

<sup>2</sup> Tramways (Metropolis) Bills, 1871; General Power Distributing Company Bill, 1898; Brompton and Piccadilly Circus Railway, and other London Underground Railways, Bills, 1901; Leeds Corporation (Consolidation) Bill, 1904; Hammersmith, City, and North East London Railway Bill, 1906; Local Government Provisional Orders (No. 21) Bill, East Ham Corporation Bill and Electric Lighting Provisional Order (No. 8) (Kingstown) Bill [Lords], 1913; London County Council (General Powers) Bill, Glasgow Corporation (Celluloid) Bill, Pack-Beresford Divorce Bill [Lords], and Local Government Provisional Orders (No. 23) Bill, 1914.

## CHAPTER XXIX.

COURSE OF PROCEEDINGS IN THE LORDS UPON PRIVATE  
(LOCAL) BILLS.

Private bills in Lords : distinguished as "Local" or as "Personal."

ALL private bills, during their progress in the Commons, are known by the general denomination of private bills : but in the Lords the several bills which are divided into the first and second class, are now distinguished, in the standing orders of that house, as "Local" bills ; and estate, divorce, naturalization, name, and other bills not specified as Local bills are termed "Personal" bills.

Formerly, the only private bills which could originate in the Lords were those which did not concern rates, tolls, or duties. But the convenient relaxation in the privileges of the Commons (see p. 627), and the desire to equalize the pressure of private business upon the two houses, have led to the present arrangement—for introducing as near as may be half of the private bills of each session, in the first instance, into the House of Lords. This arrangement, and the manner of determining in which house each private bill shall originate, have already been described (see p. 624). Private bills which have always been first brought into the Lords are estate, naturalization, name and divorce bills, and such as relate to the peerage. They are "Personal bills," however ; and the proceedings on these bills will form the subject of the next chapter.

Local bills : the two classes.  
S. O. 1.

In the present chapter it is proposed to follow the proceedings in the Lords on "Local" bills, whether originating in that house or brought from the Commons ; the bills so specified in the Lords being those which by standing order No. 1 are divided into the two classes already referred to (see p. 613).

Deposit of petition for bill not required except in certain cases.  
S. Q. 86.

A local bill is presented to the House of Lords without the preliminary petition which is required for the introduction of a private bill in the House of Commons ; except when the promoters of a bill have failed to make the necessary deposits within the time limited by the standing orders. In this case a petition, with a copy of the bill annexed thereto, is presented to the house, and they are together referred to the Examiner, who reports to the house that the standing

orders have not been complied with, and the standing orders committee, to whom the report is referred, decide whether the circumstances of the case are such that the standing orders may be dispensed with and leave be given to introduce the bill.<sup>1</sup>

A printed copy of every local bill, proposed to be introduced into either house, is required to be deposited in the Office of the Clerk of the Parliaments, on or before the 17th December.

Deposit  
of bill.  
S. O. 32.

The examination of the bills so deposited is to commence on the 18th January. Any parties may appear before the Examiners and be heard, by themselves, their agents and witnesses, upon a memorial addressed to the Examiner, under precisely the same conditions as in the Commons (see p. 616). The Examiner certifies whether the standing orders have or have not been complied with; and when they have not been complied with, he certifies the facts upon which his decision is founded, and any special circumstances connected with the case; and his certificate is deposited in the Office of the Clerk of the Parliaments. If the Examiner feels doubts as to the due construction of any standing order, he may make a special report, which will accompany his certificate. By these arrangements the proofs of all the requirements of the standing orders which are to be complied with, prior to the introduction of the bill into either House of Parliament, are taken before the bill is brought into the House of Lords.

Proceed-  
ings before  
the Ex-  
aminers.  
S. O. 70.  
S. O. 73.  
74. 77.  
S. O. 76.  
78.

Every local bill brought from the Commons, is referred, after the first reading, to the Examiners, before whom compliance with such standing orders as have not been previously inquired into is proved. Petitions for additional provision, in private bills originating in the House of Lords<sup>2</sup> (see p. 747), are referred to the Examiner, and he is to report to the house in respect of all standing orders which would have been applicable in the case of a bill. The Examiner gives two clear days' notice of his examination, either of a bill or of a petition for additional provision; and memorials in respect of any bill referred to the Examiners after first reading, or of any petition for additional provision (see p. 621) are to be deposited, with two copies, in the Office of the Clerk of the Parliaments before twelve o'clock on the preceding day.

S. O. 70a.  
S. O. 71.  
S. O. 72.  
75.

<sup>1</sup> Darnley Gold Mining Company's Bill, 1905, 137 L. J. 46, 52, 55, 60, 62. Cf. also Richardson and Co. (Warrants) Bill, 1890; Worm's and Balé's Patent Bill, 1891; Portsea Island Building Society Bill, 1893.

<sup>2</sup> Where the provisions sought to be inserted were comprised in the original notices, but were not contained in the bill, as introduced into Parliament, the original notices are not held to apply to them.

*S. O. 79.* All certificates of the Examiners, after being deposited (p. 743), are laid upon the table of the house on the first day on which the house next sits.

*Standing orders committee.* The standing orders committee is appointed at the commencement of every session, and consists of forty lords, besides the chairman of committees of the House of Lords, who is always chairman of the standing orders committee. Three lords, including the chairman, are a quorum; and three clear days' notice is to be given of the meeting of the committee.

*S. O. 83-84.* Every certificate from the Examiners, stating that the standing orders have not been complied with, or any special report made by them, is referred to this committee, who report whether the standing orders ought to be dispensed with, and upon what terms and conditions, if any.

*S. O. 85.* This committee is specially empowered to hear the parties affected by any standing order referred to in the Examiner's certificate or special report, provided that such parties shall have duly deposited a statement (which is to be strictly confined to the points reported upon by the Examiner) of the facts to be submitted to the committee.<sup>1</sup> In practice, the agents of the parties are invariably heard on their statements by the standing orders committee in the Lords; but, under the standing order, no party is to be allowed to travel into any matter not referred to in his statement.

*Other standing orders to be proved in certain cases.* In addition to the standing orders already proved before the Examiners prior to the introduction of the bill, there are certain other orders, with which compliance is proved at a later period before the Examiner, who in all cases reports whether they have or have not been complied with. They relate to particular classes or descriptions of bills, and will be stated as they respectively apply to each.

*The "Wharncliffe Order."* The order commonly known as "The Wharncliffe Order," originated in the House of Lords in 1846, and was adopted by the House of Commons in 1858. It has often been amended, and now, divided into several orders, it appears, *mutatis mutandis*, in the standing orders of both houses as Nos. 62 to 66, which briefly are as follow:—

*Meeting of proprietors in case of bill.* By standing order No. 62, in the case of a bill promoted by a company already constituted by Act of Parliament, proof is to be

<sup>1</sup> Such statements are to be lodged in the office of the Clerk of the Parliaments, not later than three o'clock on the second

day after the order for the meeting of the committee is made; and, in all opposed cases, they are to be printed.

given before the Examiner that the several requirements of the standing order relating to the meeting of proprietors, and the approval of the bill by such proprietors holding at least three-fourths of the paid-up capital of the company, have been complied with.

promoted by existing statutory company.

S. O. 62.

By standing order No. 63, in the case of a bill promoted by any company, society, association, or co-partnership formed or registered under the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, or otherwise constituted (and not being a company to which the preceding order applies), proof shall be given before the Examiner<sup>1</sup> that the bill has been approved of by a majority of three-fourths in number and value of the proprietors, and similarly

Meeting of members in the case of bills promoted by limited companies, &c.

S. O. 63.

by a separate class of proprietors as distinct from the proprietors generally, so far as the bill relates to such class. And under standing order No. 65, in the case of every bill brought from the other house, in which provisions have been inserted in that house empowering or requiring any such company, &c., as is described in standing order No. 63—

And in the case of such bills when originating, or when materially altered, in the other House.

S. O. 65.

"to do any act not authorized by the memorandum and articles of association of such company, or other instrument constituting or regulating such company, society, association, or co-partnership, or authorizing or enacting the abandonment of the undertaking, or any part of the undertaking, of any such company, society, association, or co-partnership, or the dissolution thereof, or in which any such provisions originally contained in the Bill have been materially altered in that house—or by which any such powers are conferred on any company, society, association, or co-partnership not being the promoters of the bill"—

the same proofs as are mentioned in standing order No. 63 are required to be given before the Examiner.

By standing order No. 64, in the case of every bill brought from the other house in which provisions have been inserted in that house, empowering the promoters, being a company already constituted by Act of Parliament,

Meeting of proprietors in the case of certain bills originating, or materially altered, in the other House.

S. O. 64.

"to execute, undertake, or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking, or any part thereof, or to enter into any agreements with any other company for the working, maintenance, management, or use of the railway or works of either company, or any part thereof, or to amalgamate their undertaking, or any part thereof, with any other undertaking, or to purchase any other undertaking, or part thereof, or any additional lands, or to abandon their undertaking, or any part thereof, or to dissolve the said company, or in which any such provisions

<sup>1</sup> In the Lords, this proof and that mentioned in the preceding paragraph are required to be given before the second reading of the bill in that house.

originally contained in the bill have been materially altered in that house—or in which any such powers are conferred on any company not being the promoters of the bill”—

the Examiner shall report whether the consent of the proprietors by a majority of three-fourths in number and value has or has not been given to the bill.

Proof of consent to subscriptions to another company.  
S. O. 66.

And, by standing order No. 66, when any bill as introduced into Parliament, or as amended (or proposed to be amended) on a petition for additional provision, contains a provision authorizing any company to subscribe or alter the terms of subscription towards, or to guarantee, or to raise any money in aid of, the undertaking of another company, proof is required<sup>1</sup> before the Examiner that the company so authorized has duly consented to such subscription, &c., at a meeting of proprietors, subject to the same provisions as the meeting directed to be held under order No. 64: but where such consent has been given, the bill in respect of such provision need not be submitted to the approval of a meeting to be held in accordance with that order.<sup>2</sup>

Certain railway bills to be submitted to rating authorities in Ireland.  
S. O. 67 (of both Houses).  
S. O. 68 (of both Houses).

Under standing order No. 67, when a railway bill contains a provision by which payments are charged on the poor rate or any other local rate in Ireland, it is to be submitted (after due notice) to the county council, or other authority empowered to make such rate, and approved by them.

Standing order No. 68 (of both houses) provides that—

“When in any bill,” brought from the other house, “for the purpose of establishing a company for carrying on any work or undertaking, any person is specified as manager, director, proprietor, or otherwise concerned in carrying such bill into effect, proof shall be required before the Examiner that such person has subscribed his name to the petition for the bill, or to a printed copy of the bill, as brought up to this house.”

S. O. 61 and 60 (of both Houses).

And, as already described, compliance has also to be proved with standing order No. 61 (which is identical in both houses), in the case

<sup>1</sup> In cases where the provision described is contained in the bill as introduced into Parliament, this proof is required, in the Lords, before the second reading of the bill in that house, and, in the Commons, within five weeks of the endorsement by the Examiner of the petition for the bill.

<sup>2</sup> These “Wharnccliffe” standing orders Nos. 62 to 66, contain special requirements with regard to the notice to be given of meetings, the holding of a poll if demanded, the use of proxies and other

matters for the conduct of the proceedings at the meetings, and the record of the result; and by these requirements the interests of every class of the proprietary are secured. And under standing order 74, which corresponds to standing order 75 of the Commons (*supra*, p. 620), proprietors, &c., dissenting under standing orders 62–66, are permitted to be heard upon a memorial before the Examiners.

of particular bills brought from the other house, in which certain alterations have there been made (see p. 641); and with standing order No. 60, which is also the same in both houses and which relates to the deposit with various departments, at a prescribed time, of every bill brought from the other house (see p. 668).

These are the several standing orders of the Lords with which compliance must be proved before the Examiner. Other standing orders will be referred to in describing the further stages of bills.

No local bill is to be read a first time until the examiner has certified compliance with the standing orders, and no such bill originating in the Lords is to be read later than three clear days after such certificate. No local bill brought from the Commons is to be read a second time until after the certificate of the Examiner; nor after certain dates (generally in June) determined by an order which is made each session.<sup>1</sup> Bills affecting any charity or educational foundation in England or Ireland are not to be read a second time until the house has received a report from the attorney-general. Bills by which the maximum rates on a railway are to be increased are not to be read a second time "until a report thereon from the board of trade has been laid upon the table." No local bill, originating in the House of Lords, is to be read a second time earlier than the fourth day, nor later than the seventh day, after the first reading, except in certain cases mentioned in standing order No. 91.

First and second reading of local bill.

S. O. 86A.

S. O. 87.

S. O. 89.

S. O. 90.  
133B.

S. O. 91.

No petition, praying to be heard upon the merits, against any local bill brought from the House of Commons, will be received unless it be presented by being deposited in the Private Bill Office, before three o'clock in the afternoon, on or before the seventh day after the first reading. In the case of bills originating in the House of Lords, petitions are to be presented on or before the 19th February.

Petitions against local bills, when to be presented.

S. O. 93.

S. O. 92.

No petition for additional provision is to be presented without the sanction of the chairman of committees; and no such petition will be received in the case of a bill brought from the House of Commons.<sup>2</sup>

Petitions for additional provision.

S. O. 94.

The second reading of a local bill is in most cases formal, and does not, as in the case of public bills, affirm the principle of the bill, which may therefore be called in question before a committee.<sup>3</sup> The second reading is followed by the committal.

Second reading and committal.

<sup>1</sup> 137 L. J. 67; &c.

<sup>2</sup> Cf. also standing order 147 as to the printing of petitions for additional provision, of petitions against bills, and of petitions against alterations.

<sup>3</sup> See debate on motion to recommit the South-Eastern and London, Chatham, and Dover Railway Companies (Arbitration) Bill, 18th May, 1885, 298 H. D. 3 s. 650.

Committees on opposed bills.

S. O. 96.

S. O. 98.

Every opposed local bill is referred to a select committee of five, selected by the committee of selection. Lords are exempted from serving on the committee of any bill in which they are interested, and may be excused from serving for any special reasons to be approved of, in each case, by the house. On the 2nd April, 1868, it was resolved that the absence of any lord, except on sufficient reason, ought not to prevent the committee of selection from calling for his services.<sup>1</sup>

Committee of selection.

S. O. 97.

The committee of selection consists of the chairman of committees and four other lords named by the house. They not only select and propose to the house the names of the five lords who are to form the select committee for the consideration of an opposed local bill or provisional order bill; but also appoint the chairman of such committee, and name the bill or bills to be considered on the first day of meeting of the committee.

Sittings of committees on bills.

S. O. 99.

The attendance of the lords upon such committees is very strictly enforced. Each committee is to meet

"Not later than eleven o'clock every morning, and shall sit till four, and shall not meet at a later hour nor adjourn at an earlier hour without leave of the house or without reporting to the house the cause of such later meeting or earlier adjournment. No committee shall adjourn over any day except Saturday, Sunday, Christmas Day, and Good Friday, without leave of the house, or without reporting to the house the cause of such adjournment; but should a committee meet on a Saturday, the sitting is to be in conformity with this order."

S. O. 100.

Every member is to attend the proceedings during their whole continuance; "and no lord who is not a member of the committee shall take any part in the proceedings."

S. O. 101.

If any member "is prevented from continuing his attendance, the committee shall adjourn, and shall not resume its sittings, in the absence of such member, without leave of the house: but if the house is not then sitting, the committee may, with the consent of all parties, continue its sittings in the absence of any member, provided that the number of the committee be not less than four, and that the committee report accordingly to the house at its next meeting."<sup>2</sup>

Order in which committees consider bills.

S. O. 99A.

In accordance with standing order No. 99A, the committee take the bill or bills first into consideration which shall have been named by the committee of selection,

"And may from time to time appoint the day on which they will enter upon the consideration of each of the remaining bills without reporting to the house any adjournment of the committee caused thereby."

Withdrawal of opposition.

If no parties appear on their petitions against a bill, or, having

<sup>1</sup> 100 L. J. 103.

<sup>2</sup> See debates on the absence of Lord Gardner, 81 H. D. 3 s. 1104. 1190.



appeared, withdraw their opposition before their case has been fully opened—or if their *locus standi* is disallowed,—the committee are required, by standing order No. 102, to report accordingly to the house, and the bill is then dealt with as if originally unopposed. But nothing contained in this order prevents the committee “from requiring the preamble of a bill to be proved in any case in which an application for costs has been made.”<sup>1</sup>

The proceedings of a Lords’ committee on an opposed bill differ in no material point from those of a committee in the Commons, except as to questions of *locus standi* presently to be mentioned. By section 2 of the Parliamentary Witnesses Act, 1858 (21 & 22 Vict. c. 78), any committee of the House of Lords may administer an oath to the witnesses examined before them; and thus the inconvenience of a previous attendance at the bar of the house is avoided. Petitions against the bill are referred, and the parties are heard by themselves, their counsel, agents, and witnesses, in the same manner, and subject to nearly the same rules, as in the Commons. Some are heard upon the preamble, and others against particular clauses, or in support of new clauses or amendments. The bill is gone through, clause by clause, and, after all amendments have been made, it is reported, with the amendments, to the house.

Questions on the *locus standi* of the petitioners against a bill are heard by the committee to which the bill is referred. In this respect the House of Lords have preserved the original practice of both houses, which was abandoned by the House of Commons in 1865, when the court of referees was established (see p. 673); but the House of Lords, like the House of Commons, has passed several standing orders—some mandatory, and some permissive—respecting the *locus standi* of petitioners in certain cases. Thus:—

“In case any proprietor, shareholder, or member of or in any company, society, association, or co-partnership shall, by himself or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of any of the aforesaid standing orders Nos. 62. 63. 64. 65. and 66, or at any meeting called in pursuance of any similar order of the House of Commons, such proprietor, shareholder, or member shall be permitted, on petitioning the house, to be heard by the committee on the bill, by himself, his counsel or agents, and witnesses.”

“Where any body of persons corporate or unincorporate sufficiently representing a particular trade, business, or interest in any district to which any railway

Witnesses  
on oath.

Peti-  
tioners  
heard.

Locus  
standi of  
peti-  
tioners.

As to the  
locus  
standi of  
dissen-  
tients at a  
“Wharn-  
cliffe”  
meeting,  
S. O. 165.

Locus  
standi of  
bodies re-  
presenting

<sup>1</sup> As to the power possessed by committees of the House of Lords, in common with those of the other house, of awarding costs, cf. pp. 726-7, and 729, note 1.

particular trades, &c.  
S. O. 105A. bill relates, petition against the bill, alleging that such trade, business, or interest will be injuriously affected by the rates and fares proposed to be authorized by the bill, it shall be competent for the select committee to whom the bill is referred, if they think fit, to hear the petitioners or their counsel or agents and witnesses on such allegation against the bill, or any part thereof, or against the rates and fares proposed to be authorized by the same."

*Locus standi of chambers of agriculture, &c.*  
S. O. 105B. "Where any society or association, sufficiently representing a trade, business or interest, in any district to which any bill relates, petition against the bill, alleging that such trade, business or interest, will be injuriously affected by the provisions contained in the bill, it shall be competent for the select committee to whom the bill is referred, if they think fit, to hear the petitioners or their counsel or agents and witnesses on such allegation against the bill or any part thereof."

*Locus standi of county councils, &c.*  
S. O. 105C. "Where the council of any administrative county or county borough or being a joint committee of councils of administrative counties or county boroughs petition against a bill, alleging that such county or county borough or some part thereof will be injuriously affected by the bill, it shall be competent for the select committee to whom the bill is referred, if they think fit, to hear such petitioners or their counsel or agents and witnesses on such allegation against the bill or any part thereof."

S. O. 105D. "The council of any administrative county alleging in their petition that such administrative county, or any part thereof, may be injuriously affected—

(a) By the provisions of any bill relating to the water supply of any town or district, whether situate within or without such county; or

(b) By the provisions of any bill proposing to authorize the construction or reconstruction of any tramway along any main road, or along any other road to the maintenance and repair of which the county council contributes, within the administrative county,

shall be entitled to be heard against such bill."

*Locus standi against Commons' bills.*  
"A petitioner against a bill originating in the House of Commons, who has discussed clauses in that house, shall not on that account be precluded from opposing the preamble of the bill in this House."

S. O. 102A. Unopposed local bills are referred to the chairman of committees, "and such lords as think fit to attend": but the business is practically transacted by the chairman of committees, assisted by his counsel, and the responsibility is vested in the chairman by the house. Every bill has been previously examined by the chairman and his counsel: but at this period the chairman exercises the authority of his own office, combined with that of a committee of the house. In the absence of the chairman from illness, another peer has been appointed to take the chair in all committees, upon private bills, and other matters (see p. 406).

Unopposed The chairman of committees may, in any case, report his opinion

<sup>1</sup> This is analogous to the standing order No. 143 of the Commons regarding petitioners against bills brought from the Lords (pp. 692-3).

to the house, that any unopposed bill on which he shall sit as chairman, ought to be proceeded with as an opposed bill.<sup>1</sup>

The directions to Lords' committees upon local bills are generally similar to those of the Commons, already described, and the greater part of the standing orders relating to railway and other local bills are the same (see pp. 702 *et seq.*). They differ, however, in regard to particular matters, which, by special standing orders, are required to be proved or enforced, either in relation to all bills or to bills of particular classes or descriptions. Substantially the same provision is made as in the House of Commons in regard to certain bills in which power is sought to take houses inhabited by the working-classes, inclosure bills, bills under which the level of any road is to be altered or under which water is to be impounded, bills authorizing gas companies to raise additional capital, and bills promoted by local authorities; and also in regard to the consideration by the committee of certain reports made by public departments. Standing order No. 104 provides that—

“Any agreement intended to be scheduled to any bill shall contain a clause declaring the same to be made subject to such alterations as Parliament may think fit to make therein: but if the committee on the bill make any material alteration in any such agreement, it shall be competent to any party thereto to withdraw the same.”

Standing order No. 107 provides for the insertion, in every bill of the second class, of a clause to the effect that, if the work authorized by the bill be not completed within a specifically prescribed period, the powers and authorities, under the bill, for completing it shall cease. Standing order No. 110 provides that, where a public navigable tidal river or channel is included within the limits of deviation of any work (other than a railway), a clause shall be inserted in the bill, making the consent of the Board of Trade necessary to any deviations that diminish the navigable space. And in any bill by which the profits of any company are limited, a provision has to be inserted restricting the company's power to convert into capital the money borrowed under the bill.

With regard to bills for the construction of gasworks, the making of cemeteries, the generation of electricity, &c., standing orders No. 139 and 140 provide that—

“In every bill for making or constructing gasworks or sewage works or works for the manufacture or conversion of the residual products of gas or sewage, or

<sup>1</sup> Gaslight and Coke Company Bill, 1873; Durham Water Bill, 1878.

for making or constructing, altering or enlarging any sewage farm, cemetery, burial ground, crematorium, destructor, hospital for infectious disease, or station for generating electrical energy, there shall be inserted a clause defining the lands in or upon which such gasworks, sewage works, farm, cemetery, burial ground, crematorium, destructor, hospital or generating station may be made or constructed.

- S. O. 140.* "In every bill for making, altering, or enlarging any cemetery or burial-ground, a clause shall be inserted prohibiting the making, altering, or enlarging of such cemetery or burial-ground, within 300 yards of any house of the annual value of 50*l.*, or of any garden or pleasure-ground occupied therewith, except with the consent of the owner, lessee, and occupier thereof in writing."

Torailway  
bills.

*S. O. 112.*  
*113.*

In the case of railway, tramroad, and tramway bills, in addition to the general inquiries which they conduct, committees are required to see that certain conditions are observed, regarding the raising of loans on mortgage, or the crossing of roads on a level. They are also required to observe substantially the same rules, and to introduce practically the same clauses and provisions, as in the Commons, relative to the fixing of rates and charges, the completion of the railway, the application of the deposit money, the protection of holders of preference stock or shares, the purchase of steam-vessels by railway companies, the payment of interest out of capital or of parliamentary deposits out of capital, the financial arrangements of companies in cases of purchase and amalgamation, the application of the provisions of the Railway and Canal Traffic Acts, the revision of rates, the working of tramways by local authorities, and other matters (such as the specific statement to be given of the length of a proposed line) which are set out in similar standing orders in the House of Lords. All these provisions, however, would be included in a bill originating in the House of Commons.

- S. O. 117.* By standing order No. 117, the committee on a railway or tramway bill may insert a clause prohibiting the use of compulsory powers of purchase, if the direct object of the bill be to serve private interests, and provide that no penalty should accrue for non-completion, and for the return of the deposit money to the promoters.

By standing order No. 123, no bill by which a railway company is incorporated is to contain

- S. O. 123.* "Any powers of purchase, sale, lease, or amalgamation, or any working agreement not made unconditionally determinable by the company at the expiration of a period not exceeding ten years from the passing of the Act, or any power of entering into working agreements, except under the provisions of Part III. (working agreements) of the Railways Clauses Act, 1863, as amended by the Railway and Canal Traffic Acts, 1873 and 1888."

And, by standing order No. 124, when powers are applied for to S. O. 124. amalgamate with any other company, or to sell or lease the undertaking, or purchase or take on lease another undertaking, or to enter into traffic arrangements, all such particulars are to be specified in the bill as introduced into Parliament.

The following clause is also required to be inserted in every railway S. O. 130. bill incorporating a new company :—

“The directors appointed by this Act shall continue in office until the first ordinary meeting to be held after the passing of the Act, and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by this Act, or any number of them, or may elect a new body of directors or directors to supply the places of those not continued in office, the directors appointed by this Act being, if they continue qualified, eligible as members of such new body.”

In the case of bills for extending the terms of letters patent, And to letters patent bills.  
compliance must be proved before the committee on the bill with the following standing orders :—

S. O. 136.

“Every bill for restoring any letters patent shall have a true copy of such letters patent annexed thereto; and the total amount of fees . . . due and to become due on the patent shall be deposited with the comptroller-general of patents, designs, and trademarks before the meeting of the committee on the bill, and such deposit proved before the committee.

“In any case in which a bill to restore a patent is entertained, the following S. O. 137. clauses shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after it has been announced as void in the official journal of the Patent Office, with such alterations as the circumstances of each case may require :—

“No action or other proceeding shall be commenced or prosecuted, nor any damage recovered :—

“(1) In respect of any infringement of the said patent which shall have taken place after the                      day of                      (the day on which the patent was announced to be void in the official journal), and before the passing of this Act.

“(2) In respect of the use or employment at any time hereafter of any machine, machinery, process, or operation actually made or carried on within the British Islands, or of the use or sale of any article manufactured or made in infringement of the said patent, after the said                      day of                      and before the passing of this Act : Provided that such use, sale, or employment is by the person or corporation by or for whom such machine or machinery or article was *bonâ fide* manufactured or made, or such process or operation was *bonâ fide* carried on, his or their executors, administrators, successors, or vendees, or his or their assigns.

“(3) In respect of the use, employment, or sale at any time hereafter by any person or corporation entitled for the time being under the preceding subsection to use or employ any machine, machinery, process, or operation of any improved

or additional machine or machinery, or any improved, extended, or developed process or operation, or of any article manufactured or made by any of the means aforesaid, in infringement of the said patent: Provided that the use or employment of any such improved or additional machine or machinery, or of any such improved, extended, or developed process or operation, shall be limited to the buildings, works, or premises of the person or corporation by or for whom such machine or machinery was manufactured, or such process or operation was carried on within the meaning of the preceding subsection, his or their executors, administrators, successors, or assigns.

“ If any person shall, within one year after the passing of this Act, make an application to the board of trade for compensation in respect of money, time, or labour expended by the applicant upon the subject-matter of the said patent, in the *bonâ fide* belief that such patent had become and continued to be void, it shall be lawful for the said board, after hearing the parties concerned, or their agents to assess the amount of such compensation, if in their opinion the application ought to be granted, and to specify the party by whom and the day on which such compensation shall be paid, and if default shall be made in payment of the sum awarded, then the said patent shall, by virtue of this Act, become void, but the sum awarded shall not in that case be recoverable as a debt or damages.”

Instructions on private bills.

Instructions to committees on local and personal bills are rarely given by the House of Lords,<sup>1</sup> though instances of this mode of procedure have occurred.<sup>2</sup>

Recommittal of local bills.

No local bill reported from a select committee may be recommitted to the same or another select committee before the third day on which the house shall sit after notice of the motion to recommit the bill.

S. O. 141.

Recommittal to committee of the whole house.

In order to ensure attention to bills affecting public interests, the chairman of committees may propose that any local bill be recommitted to a committee of the whole house:<sup>3</sup> but no local bill so recommitted is, by reason of such committal, to be allowed to proceed as a public bill.

S. O. 142.

Deposit of amended bills.

A copy of every local bill, if amended in committee, is to be deposited three days before the third reading,<sup>4</sup> at every office

<sup>1</sup> 49 Parl. Deb. 4 s. 457; 109 ib. 1340-1; 146 ib. 1080; 21 H. L. Deb. 5 s. 297.

<sup>2</sup> Dublin Corporation Bill, 1897, 129 L. J. 168, 49 Parl. Deb. 4 s. 453-464; London County Council (Subways and Tramways) Bill, 1902, 134 L. J. 249, 109 Parl. Deb. 4 s. 1332-1350; Woolwich Borough Council Bill, 1905, 137 L. J. 162, 146 Parl. Deb. 4 s. 1075-1087; South Eastern and London, Chatham, and Dover Railways Bill, 1916, 148 L. J. 55, 21 H. L. Deb. 5 s. 425. And cf. 124 L. J. 112 (general instruction to com-

mittees on railway bills of session 1892). In 1893 the committee on the London Improvements Bill, treated as an instruction a resolution of the house passed on the 25th July of that year—to the effect that a clause in the bill, authorizing the principle of taxation for betterment, ought not to be embodied in a private bill—and refused to hear the parties on the clause.

<sup>3</sup> Oriental Bank Corporation Bill, 1873; Nottingham Corporation Bill, 1882.

<sup>4</sup> Proof of compliance with this order

at which it was deposited under standing orders 33 and 34, or *S. O.* 143. would be required to be deposited under those orders if it had been originally introduced as amended in committee.

It is further ordered that all local bills in which any amendments have been made in the committee, shall be reprinted as amended, previously to the third reading, unless the chairman of committees shall consider that the reprinting of such bill is unnecessary. Local bills to be reprinted. *S. O.* 145.

No amendment may be moved to any local bill on the report or third reading, unless it has been submitted to the chairman of committees, and copies<sup>1</sup> deposited in the Office of the Clerk of the Parliaments one clear day, at least, prior to such report or third reading. Amendments on report, &c., of local bills. *S. O.* 144.

When a private bill has been read the third time, and passed, it is sent to the Commons; or, if it is a bill originally brought from that house, it is returned "with amendments," or a message is sent to acquaint the Commons that it has been agreed to without any amendment. The ordinary proceedings in the Commons upon amendments made by the Lords to Commons' bills were described in the last chapter. In the event of any disagreement between the houses in reference to amendments, the same forms are observed as in the case of public bills (see p. 388 *et seq.*). Proceedings after third reading of private bills.

has to be given by depositing a certificate from the board in the office of the Clerk of the Parliaments.

ment have to be printed unless the chairman of committees considers printing to be unnecessary.

<sup>1</sup> These copies of any proposed amend-

## CHAPTER XXX.

RULES, ORDERS AND COURSE OF PROCEEDINGS IN THE LORDS UPON  
PRIVATE OR PERSONAL BILLS.

**Personal bills:** HAVING traced the progress of Local bills through the House of Lords, it is time to advert to the proceedings peculiar to Personal bills which have always been first solicited in the Lords.

**Definition.** All estate, divorce, naturalization, and name bills, and all other private bills not specified in standing order No. 1 as local bills, are termed Personal bills.

**Petitions for bills.** No personal bill is to be brought into the house except on petition for leave to bring in such bill, and a printed copy of the proposed bill is to be annexed to the petition. One or more of the parties principally concerned in the consequences of the bill must sign the petition; and the sessional order, to which reference has already been made (see p. 747), fixes certain dates, each year, after which no petitions for private bills will be received by the house.

**Personal bills to be delivered to persons concerned.** A copy of every personal bill is to be delivered before the second reading to every person concerned; and, in case of infancy, such copy is to be delivered to the guardian, or next relation of full age, not concerned in the consequences of the bill. In any case, in which an infant is or may be interested in the consequences of an Estate bill—

*S. O. 163A.* “The chairman of committees may, if he think fit, require that such infant shall be represented before the committee on the bill by a person to be appointed as or in the nature of a guardian or protector of such infant by the lord chancellor or the lord keeper of the great seal by writing under his hand.”<sup>2</sup>

**Petitions for English estate bills referred to two of the judges.** In the case of Estate bills, the Lords, having power to consult the judges in matters of law, order that—

Every petition for an Estate bill not approved by the High Court of Justice concerning estates in land in England shall, on presentation to this House, be referred to two of the judges.

*S. O. 153.* <sup>1</sup> 137 L. J. 67.

<sup>2</sup> Earl of Aylesford's Estate Bills, 1883 and 1884, 115 L. J. 142; 116 ib. 307;

Belfast Corporation Bill, 1890, 122 ib. 238; Earl of Stamford's Cheshire Estate Bill, 1905, 137 ib. 233; &c.



referred to two of the judges of the said court, who shall report to the house under their hands, whether, presuming the allegations contained in the preamble to be proved to the satisfaction of the lords spiritual and temporal in Parliament assembled, it is reasonable that the bill do pass into a law, and whether the provisions thereof are proper for carrying its purposes into effect, and what amendments, if any, are required therein; and in the event of their approving the bill, they are to sign a copy of the same, containing the required amendments (if any).<sup>1</sup>

The orders respecting Scotch and Irish Estate bills are somewhat different. In the case of Irish bills the reference to judges is made only "if the petitioners for the bill desire it and the chairman of committees so determine;" and in the case of both Scotch and Irish Estate bills the parties are heard, the evidence taken, and the consents to the bill and acceptances of trusts proved, before the judges to whom the bill is referred, instead of before the committee of the House of Lords.

Scotch and Irish estate bills.  
S. O. 154.  
155.

The sessional order, already alluded to, fixing certain dates after which no petitions for private bills will be received, also contains a provision which refers to estate bills, and fixes a date after which no report from the judges upon a petition for a private bill will be received.<sup>2</sup> No estate bill will be read a first time, until a copy of the petition and of the report of the judges has been delivered to the chairman of committees.

First reading of estate bill.

S. O. 156.

Notice of an estate bill is to be given to every mortgagee, before the second reading.

Notice of estate bill.  
S. O. 157.

Petitions against estate bills are to be presented at such times (and such proceedings are to be taken thereon), as the chairman of committees shall, in each case, having regard to all the circumstances, direct.

Petitions against estate bills.  
S. O. 159.

No committee is to sit upon any estate bill until ten days after the second reading; and the several proceedings of committees on estate bills—the consents and acceptances of trusts, the evidence required, the provisions to be inserted, and other matters—are specifically directed by the standing orders, Nos. 160 to 174.<sup>3</sup>

Committees on estate bills.  
S. O. 158.  
S. O. 160–174.

<sup>1</sup> Standing order dispensed with, 107 L. J. 136 (Paget's Settled Estate Bill, 1875).

<sup>2</sup> The order is not enforced where a peer is the petitioner, or if proceedings be pending in chancery, or if the bill has been rendered necessary by circumstances arising too late for compliance

with this order. Nor does the sessional order apply to any new bill, sent up from the House of Commons, which the chairman of committees shall report to the house as substantially the same as a bill which has passed the house with amendments, 137 L. J. 67.

<sup>3</sup> Of these orders, standing orders Nos.

Estate  
bills in the  
Commons.

In the Commons an estate bill is referred after first reading to the Examiners; and the committee in that house have to report—

S. O. (H.  
C.) 188A.

“If the bill contains provisions extending either the term or the area of any settlement of land.”

Divorce  
bills.

In regard to Divorce bills it may be said that applications for such Acts now come only from Ireland, where a divorce *a mensâ et thoro* can be obtained from the High Court of Justice, but not a dissolution of marriage enabling the parties to marry again. The facilities for a dissolution of marriage which are now given in England (by the Matrimonial Causes Act of 1857 and subsequent Acts), in India (by an Act of 1869<sup>1</sup>), and in various parts of the British dominions, have rendered divorce bills unnecessary in many cases where they were formerly applied for. The standing orders which both houses have retained in regard to divorce bills, however, relate to such bills generally.

Divorce  
bills in the  
Lords.

In the Lords, standing orders Nos. 175 and 176 provide that—

“No petition for any bill of divorce shall be presented to this house unless an official copy of the proceedings taken or had in the court having jurisdiction over matrimonial causes at the place of his domicile or residence,<sup>2</sup> or in some other court having jurisdiction in that behalf, at the suit of the party desirous to present such petition, be delivered upon oath at the bar of this house at the same time.”

And that—

S. O. 176. “No bill grounded on a petition to this house to dissolve a marriage for the cause of adultery, and to enable the petitioner to marry again, shall be received by this house unless a provision be inserted in such bill that it shall not be lawful for the person whose marriage with the petitioner shall be dissolved to intermarry with any offending party on account of whose adultery with such person

162 to 174 (which are concerned with consents and acceptance of trusts and with the evidence in proof of the bill) are specially made applicable, by standing order No. 148, to any part of any local bill which may be of the nature of an estate bill.

<sup>1</sup> Before the year 1869, the courts in India (like the Irish court at the present day) had only power to decree a divorce *a mensâ et thoro*: but in that year, by Act No. IV. of 1869, s. 7, the high and district courts were directed, subject to the provisions of the Act in all suits and proceedings thereunder, to act and give relief on principles and rules which, in the opinion of the said courts, are as nearly as may be

conformable to the principles and rules on which the court in England acts and gives relief. The last case of a divorce bill from India was that of Munbee's Divorce Bill, passed in 1862.

<sup>2</sup> Cf. the case of Malone's Divorce Bill, 1905, where the petitioner, a domiciled Irishman, had obtained a decree absolute in the Probate Division of the High Court in England, and, upon his applying afterwards for a divorce bill, the House of Lords permitted him to deposit a copy of the proceedings in the English court as if it had been the court having jurisdiction over matrimonial causes at the place of his domicile or residence.

it shall be therein enacted that such marriage shall be so dissolved: Provided that if at the time of exhibiting the said bill such offending party or parties be dead, such provision as aforesaid shall not be inserted in the bill."

It should be stated, however, that the clause (against remarriage) inserted in the bill in pursuance of this order is always struck out in committee.

Standing order No. 177 provides that "in any case in which any *S. O. 177.* trial at *nisi prius* has been had, or any writ of inquiry executed within the United Kingdom," wherein the petitioner for a divorce bill has been party, a report of these previous proceedings shall be laid before the house; and that, until this report has been laid, the bill is not to be read a second time. And standing order No. 178 contains *S. O. 178.* detailed provisions regarding the attendance and examination of the petitioner upon the second reading of the bill in the house.

All that need be said of divorce bills in the Commons is that at the commencement of each session a committee is nominated, consisting of nine members, of whom three are a quorum, and is denominated "the select committee on divorce bills." To this committee every divorce bill, after having been brought from the Lords and read the first and second time, is committed; and there are several standing orders, which need not be fully detailed, relating to the proceedings of the committee, the hearing of counsel and witnesses and the attendance before them of the petitioner for the bill.<sup>1</sup> *Divorce bills in the Commons. S. O. (H. C.) 189. S. O. (H. C.) 189A-192.*

It may be stated, in regard to divorce bills, that when the adultery was alleged to have been committed in India, depositions taken before the judges in India were admitted as evidence, and under section 4 of the Divorce Bills Evidence Act, 1820 (1 Geo. IV. c. 101), when a warrant had been issued for the examination of witnesses, the proceedings upon the bill were not discontinued by any prorogation or dissolution of Parliament, until the examination had been returned: but "such proceedings might be resumed and proceeded upon in a subsequent session, or in a subsequent Parliament, in either house of Parliament, in like manner, and to all intents and purposes, as they might have been in the course of one and the same session."<sup>2</sup> *Evidence in case of Indian divorce bills.*

<sup>1</sup> On the 13th June, 1854, Berens' divorce bill had been read the third time and passed, when intelligence was received of the death of Mr. Berens, the petitioner for the bill. On the following day the proceedings upon the third reading were ordered to be null and void. Another day was named for the third

reading, but the bill was subsequently allowed to drop.

<sup>2</sup> See Munbee's Divorce Bill presented and read the first time 6th June, 1861; royal assent, 30th June, 1862. And cf. Roberts, Divorce Bills in the Imperial Parliament (1906), p. 56.

Naturalization bills.

S. O. (H. L.) 179.

With regard to Naturalization bills, it is ordered that no bill for naturalizing any person born in any foreign territory shall be read a second time, until the petitioner shall produce a certificate, respecting his conduct, from a secretary of state; and that no such bill shall be read a second time, unless the consent of the Crown has been previously signified. But certificates of naturalization being now granted by the secretary of state, under the public Acts relating to naturalization,<sup>1</sup> these personal bills are no longer applied for, except in a few exceptional cases, where more extended privileges are sought than are granted under the general law, and especially the right of sitting in Parliament, which, though not expressly conferred, has been given, in effect, by later naturalization Acts.<sup>2</sup>

Second reading of personal bills.

No particular interval is enforced between the first and second readings of personal bills, and if printed copies of the bill have been delivered, and the bill be unopposed, it may be read a second time on any future day. If it be opposed upon its principle, this is the proper stage for taking the decision of the house upon it.

Petitions against second reading.

It is not usual for petitions to be presented praying to be heard against any private bills on the second reading, except divorce or peerage bills—in which case, whether there are opposing petitions or not, counsel are heard and witnesses examined at the bar, in support of the bill on the second reading.

Committee of personal bills.

All the ordinary personal bills are referred to an open committee, consisting, as already explained, of the chairman of committees and such lords as think fit to attend, who inquire whether all the standing orders applicable to such bills, not already proved before the Examiner, have been complied with, and take care that the proper provisions are inserted.

Divorce bills.

Unlike other private bills, divorce bills, instead of being committed to the chairman of committees or a select committee, are committed to a committee of the whole house.

Third reading.

When a local or personal bill has been reported from a committee, and any amendments that may have been made are agreed to by the house, the bill is ordered to be read the third time on a future day.

<sup>1</sup> 4 & 5 Geo. V. c. 17 (see p. 27). As to earlier Acts, see Report of the inter-departmental committee of 1901 on the law of Naturalization.

<sup>2</sup> Bishop of Jerusalem, 1846; Mr. Tufton, 1849; Giustiniani, 1857, 1860;

Bolckow, 1868; Sir Richard Wallace, 1872; De Virte and Baron Mackay, 1877; Baron de Ramingen, 1880 (bill passed in two days); Prince Henry of Battenberg, 1885; Schlesinger, 1889; Mrs. Martin, 1890; Pohl, 1890.

In the Commons all local and personal bills when received from the Lords are read the first time, and, unless they be name or divorce bills, are referred to the Examiners (see p. 640). Private bills brought from the Lords pass through the same stages, and are subject to nearly the same rules, in the Commons as private bills that have originated there; and the few points at which the procedure is not altogether identical have all been already noticed (Chapter XXVIII.).

The procedure adopted in the case of the personal bills already described is not followed in the case of bills for reversing attainders; for the restoration of honours and lands; and for restitution in blood. These bills are first signed by the King, and are presented by a lord to the House of Peers,<sup>1</sup> by command of the Crown (see p. 347); after which they pass through the ordinary stages of public bills, and are sent to the Commons. Here the King's consent is signified before the first reading.<sup>2</sup> The customary practice is then to read the bill the first and second time and to commit it to a select committee<sup>3</sup> consisting of several members specially nominated forthwith without previous notice of their names and of "all the members of this house who are of his Majesty's most honourable privy council, and all the gentlemen of the long robe."<sup>4</sup> On the report of the bill from the select committee, the bill is appointed for third reading upon a future day.<sup>5</sup>

<sup>1</sup> Maxwell's Restitution Bill, 1848; Drummond's Restitution Bill, 1853; Lord Lovat's Restitution Bill, 1854; Carnegie's Restitution Bill, 1855; Bruce's Restitution Bill, 1869; Earldom of Mar Restitution Bill, 1885; Alexander's Restitution Bill, 1916. For earlier cases see Report of Precedents, 56 L. J. 286, Clifford, i. 361.

<sup>2</sup> In 1853 Drummond's Restitution Bill, on being brought from the Lords, was read the first time without the Queen's consent having been signified. On the following day these proceedings were declared to be null and void; the Queen's consent was signified, and the bill was then read the first and second time, and

committed to a select committee, 108 C. J. 575. 576. 578.

<sup>3</sup> 108 C. J. 584; 109 ib. 371; 124 ib. 81; 140 ib. 374; 171 ib. 82.

<sup>4</sup> These words were not added, when the committee was nominated, in the case of the Earldom of Mar Restitution Bill, 1885, 140 C. J. 374, 300 H. D. 3 s. 685; or of the Alexander's Restitution Bill, 1916, 171 C. J. 82.

<sup>5</sup> 140 C. J. 381; 171 ib. 87. These bills receive the royal assent as private bills in the form "*soit fait comme il est désiré*," 56 L. J. 425; 80 ib. 365; 86 ib. 365; 101 ib. 97; 148 ib. 124. The Earldom of Mar Restitution Bill, 1885, received the royal assent as a public bill, 117 L. J. 443.

Lords' private bills in the Commons.

Restitution, &c., bills.

## CHAPTER XXXI.

PROVISIONAL ORDERS, &C., AND THE ACTS (OTHER THAN THE PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899) UNDER WHICH THEY ARE GRANTED. AND PROCEDURE UPON PROVISIONAL ORDER BILLS.

Provi-  
sional  
Orders.

THE system of legislation by Provisional Order, which has of late years been greatly extended, enables government departments, and, in some instances, a local authority, to deal in detail with many undertakings with which Parliament would otherwise be asked to deal *ab initio* in a private or public bill. These subjects of provisional legislation are for the most part, but by no means always, of a local character. Under various Acts of Parliament most of the departments are now empowered to issue Provisional Orders (usually upon the application of parties interested) which in their scope and object are practically private bills, or to make Provisional Orders (in many cases on their own initiative) for other purposes. The objects obtainable by Provisional Order are limited to those specified by the particular enabling Act. Such orders are scheduled to a bill, which is brought in by the government department and which declares the expediency of their confirmation; and in this form they are submitted to Parliament for consideration.

Prelimi-  
nary pro-  
ceedings,  
local in-  
quiry, &c.,  
on a Pro-  
visional  
Order.

Prior to their introduction in a confirming bill, Parliament takes no cognizance of Provisional Orders; and, with one or two exceptions mentioned later (p. 787), the standing orders regulating the preliminary proceedings in the promotion of a private bill are not applicable to a Provisional Order. Those interests, however, which in the case of a private bill are protected by the standing orders, do not suffer; for in this respect the government department takes the place of Parliament, and in the promotion of a Provisional Order secures the observance of rules and regulations—similar in nature and effect to the standing orders—as to notice by advertisement of the objects of the Order, notice to owners and occupiers, consents, and deposit of documents, and as to other matters which are laid

down by the provisions of the enabling Acts or made by the department.

An important and very frequent feature in the departmental procedure on Provisional Orders is the preliminary local inquiry which, under many of the enabling Acts, has to be held into the merits of an undertaking proposed to be authorized through a Provisional Order. In some cases this inquiry is obligatory, if it be deemed advisable to proceed with the proposed undertaking; while in others the inquiry is only held if thought expedient. The inquiry is public, and held in the locality affected by the proposed order, after due notice, by an officer of the department, or other properly qualified person, who makes a report on the case to the department. These preliminary proceedings, however, being distinctly departmental and apart from the practice of Parliament, will not be noticed in detail. For the necessary procedure in each case, reference must be made to the special provisions of the enabling Act, and to the instructions issued by the government department empowered to deal with the particular subject. Preliminary local inquiry.

It is proposed, in this chapter to mention the statutes under which a government department is enabled to issue Provisional Orders that are subsequently submitted to Parliament in a bill for confirmation, and to indicate very briefly the purposes for which these various Orders are granted; and to describe the procedure in Parliament on the confirming bills. Scope of chapter.

By the Local Government Board Act, 1871 (34 & 35 Vict. c. 70), the Local Government Board was established, to which were transferred the powers and duties of the Poor Law Board, and of the Home Office and Privy Council concerning the Poor Law, public health and local government. Under the Public Health Act, 1848, the Local Government Act, 1858, the Public Health Act, 1872, and the Sanitary Law Amendment Act, 1874, and other Acts amending the same (called the Sanitary Acts), large powers of provisional legislation were authorized. These Acts were wholly or partially repealed, and their provisions consolidated in the Public Health Act, 1875 (38 & 39 Vict. c. 55). Departments empowered to make provisional orders. The Local Government Board.

I. The Local Government Board is empowered to grant Provisional Orders under the Public Health Act, 1875: (1) For wholly or partially repealing, altering or amending (a) Local Acts relating to the same subject-matter as the Public Health Act, 1875, (b) Acts for confirming Provisional Orders made in pursuance of any of the Sanitary Acts, Local government and sanitary purposes.

Local  
Govern-  
ment  
Board.

or of the Public Health Act, and any Order in Council made in pursuance of the Sanitary Acts.<sup>1</sup>

(2) For enabling local authorities to put in force the powers of the Lands Clauses Acts for the compulsory purchase of lands, for the purposes of the Public Health Act.<sup>2</sup>

(3) For the alteration of areas of local government ; for dissolving a special drainage district in which a loan has been contracted for works ; and for declaring a rural district, or any portion of such district, to be a local government district, and for dividing the same into wards or altering or abolishing such wards.<sup>3</sup>

(4) For uniting districts for the purposes of procuring a common water supply, of making main sewers, or of carrying into effect a system of sewerage, or for any other of the purposes of the Public Health Act ; and for appointing the governing body of the united district.<sup>4</sup>

(5) For uniting districts for the purpose of appointing a medical officer of health—the order in this case being provisional if objected to by any of the districts proposed to be included in the union of districts.<sup>5</sup>

(6) For permanently constituting a local authority or a joint board as the sanitary authority over a port or over two or more ports.<sup>6</sup> But, by the provisions of the Public Health (Ships, etc.) Act, 1885

<sup>1</sup> 38 & 39 Vict. c. 55, ss. 303 and 297 (5).

<sup>2</sup> *Ib.* s. 176. The purposes of the Act for which land is required are disposal of sewage, public necessities, receptacles for rubbish, water supply, hospitals, mortuaries, burial-grounds (under the Public Health (Interments) Act, 1879, construed as one with the Act), new streets or the improvement of the same, public parks and recreation-grounds, markets, slaughter-houses, and offices. With regard to water supply, the powers of a local authority are subject to an important limitation, for they are prohibited by the Act from constructing waterworks within the limits of any water company authorized by Parliament who are "able and willing" to provide a proper and sufficient supply (sec. 52). Local authorities under the Burgh Police (Scotland) Act, 1892, the Public Health (Scotland) Act, 1897, and under the Public Health (Ireland) Act, 1878, are under similar limita-

tions. It has been held that water rights cannot be compulsorily purchased under Provisional Order granted under the Public Health Act, 1875. In the West Houghton case, heard at a Lords' Committee in 1877, a preliminary objection was sustained that the Provisional Order granted by the Local Government Board for the acquisition of certain water rights was *ultra vires*, on the ground that the power under the Act to purchase "land" did not include "water."

<sup>3</sup> 38 & 39 Vict. c. 55, s. 270 (1), (2), and (3), and s. 271. The powers under these sections, though not repealed, are not now used, as similar powers are exercised by county councils, subject in some respects to the control of the Board under s. 57 of the Local Government Act, 1888, and confirmation by Act of Parliament is not required.

<sup>4</sup> 38 & 39 Vict. c. 55, s. 279, 280.

<sup>5</sup> *Ib.* s. 286.

<sup>6</sup> *Ib.* s. 287.



Local  
Govern-  
ment  
Board.

(48 & 49 Vict. c. 35), the Order for this purpose is only provisional if it is objected to by a riparian authority before a prescribed time.

(7) For dissolving a main sewerage district or a joint sewerage district (made respectively under the Public Health Act, 1848, or the Sewage Utilization Act, 1867), or for constituting them united districts.<sup>1</sup>

(8) For altering, in certain cases, the mode of defraying the expenses incurred by an urban authority for sanitary purposes.<sup>2</sup>

(9) For removing exemptions from assessment to general district rates under the Public Health Act, where similar exemptions from rating obtain under any local Act.<sup>3</sup>

(10) For settling doubts and differences and adjusting accounts arising out of any transfer of powers under the Public Health Act, 1875, or under any Provisional Order made under it, if for these purposes any rate has to be made or other thing to be done which, apart from the provisions of the Act, could not be done by law.<sup>4</sup>

(11) For authorizing a gas undertaking by an urban authority, in certain cases,<sup>5</sup> subject to the provisions of the Gas and Water Facilities Act, 1870, and of Acts amending that Act (see p. 771).

The majority of these Orders are made on the application of the local authority. Those, however, which appear under the heading of (1b), (5), (6), (7), and (9), may be initiated by the Board.

II. Provisional Orders may also be granted by the Local Government Board, under the Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106<sup>6</sup>) (amended in detail by Acts of 1868 and 1879<sup>7</sup>), (a) for readjustment, or division of parishes. repealing wholly or partially or altering a local Act, to the control of which the relief of the poor and the levy of the poor rate are subject in any union or parish in England and Wales, on the application of the Board of Guardians, or of any overseers or other persons having powers under the local Act; and (b) for readjusting or dividing parishes which are of great extent, or of which the parts are separated or are intermixed with other parishes (on the application of "one-tenth part in value of owners of property and of ratepayers in the parishes interested in the subject").<sup>8</sup>

III. Under section 2 of the Poor Law Act, 1899 (52 & 53 Vict. c. 56), Borrowing powers of guardians.

<sup>1</sup> 38 & 39 Vict. c. 55, s. 323.

<sup>2</sup> Ib. s. 208.

<sup>3</sup> Ib. s. 211 (1) (c.).

<sup>4</sup> Ib. s. 304.

<sup>5</sup> Ib. s. 161.

<sup>6</sup> Sections 2. 3.

<sup>7</sup> 31 & 32 Vict. c. 122, s. 3, and 42 & 43 Vict. c. 54, s. 9.

<sup>8</sup> This latter power has been extended and defined by the Divided Parishes Act, and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), and by the amending

Local  
Government  
Board.

Housing  
of the  
working  
classes  
and Town  
planning.

the Board may make a Provisional Order extending the maximum borrowing powers of the guardians of any union up to one-half of the total annual rateable value of their union.<sup>1</sup>

IV. The improvement of the dwellings of the working classes, and of the sanitary condition of populous places, has been the subject of numerous Acts of Parliament, which have been repealed and their provisions amended and consolidated by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), applying to the United Kingdom.<sup>2</sup> This Act, again, has been amended by subsequent Acts.<sup>3</sup>

Under Part III. of the Act of 1890, the Local Government Board<sup>4</sup> is empowered to grant Provisional Orders<sup>5</sup> for the compulsory acquisition of land by a local authority for the provision of "lodging-houses for the working classes," and the same provisions have been applied to the acquisition of land for a town planning scheme under the Housing, Town Planning, &c., Act, 1909.<sup>6</sup>

Under section 38 of the Housing, Town Planning, &c., Act, the Local Government Board is empowered to make a Provisional Order to secure the joint action of local authorities for any of the purposes of the Housing Acts.

Acts of 1879 and 1882 (42 & 43 Vict. c. 54; and 45 & 46 Vict. c. 58). (cf. also 51 & 52 Vict. c. 41, s. 57.

<sup>1</sup> By s. 5 of this Act the Local Government Board can issue Provisional Orders to enable the managers of the Metropolitan Asylum District to put in force the compulsory powers of the Lands Clauses Acts for the purchase of land adjacent to any asylum provided by them (cf. e.g. 57 & 58 Vict. (local and personal) c. cxxviii.). And by the Poor Law Act, 1897 (60 & 61 Vict. c. 29, s. 2), the Board can issue a provisional order, under s. 2 (3), of the Act of 1889, to increase the maximum which the managers of the Metropolitan Asylum District may borrow to double the amount fixed by s. 2 of the Act of 1897.

<sup>2</sup> As to the application of the Act to Scotland cf. Part V. of the Act; and as to Ireland cf. Part VI., and 59 & 60 Vict. c. 11.

<sup>3</sup> The Acts relating to England and Scotland are cited collectively as Housing of the Working Classes Acts, 1890 to 1909, and are also known as the Housing

Acts, 9 Edw. VII., c. 44, s. 51. The Acts relating to Ireland are cited as the Housing of the Working Classes (Ireland) Acts, 1890 to 1908.

<sup>4</sup> The powers which the Home Office also possessed under certain provisions of this Act were assigned to the Local Government Board, under s. 2 of the Act 3 Edw. VII. c. 39, by an Order in Council, dated 27th February, 1905.

<sup>5</sup> Confignation by Act of Parliament is no longer required for orders dealing with the improvement of unhealthy areas under Parts I. and II. of the Act, 3 Edw. VII. c. 39, s. 5, 9 Edw. VII. c. 44, s. 24, and Sch. VI.

<sup>6</sup> 53 & 54 Vict. c. 70, s. 53, 9 Edw. VII. c. 44, ss. 1. 2. 60, and Sch. I. For the conditions under which such an order may be confirmed without reference to Parliament, see 9 Edw. VII. c. 44, Sch. I. (6), (7), and for the special provisions relating to the sites of ancient monuments, to land acquired by local authorities or companies for public undertakings, &c. and to commons, open spaces or allotments, see ib. ss. 45. 73.

V. Under section 23 of the Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), the Board, in the case of England or Wales, may make a Provisional Order for determining any doubt as to the parliamentary division of a county or borough in which a parish or other place was intended by the schedules to the Act to be included, on the application of any voter.

Local  
Govern-  
ment  
Board.  
  
Parlia-  
mentary  
divisions.

VI. Under the Local Government Act, 1888 (51 & 52 Vict. c. 41), which applies to England and Wales, Provisional Orders may be granted by the Local Government Board—

Local  
Govern-  
ment  
(England  
and  
Wales).

(1) For transferring to a county council, or a county borough council, "any powers, duties, or liabilities of any quarter sessions or justices, or any committee thereof, under any local Act," which are similar in character to the powers, &c., transferred to a county council by the Local Government Act.<sup>1</sup>

(2) For transferring to county councils (a) the powers of government departments conferred by statute and appearing to relate to county matters or to be of an administrative character; also (b) such powers within the county of commissioners of sewers, conservators, or other public body corporate or unincorporate (not being a borough corporation, or urban, or rural authority, school board, or board of guardians)—subject to the approval of the government department or public body affected.<sup>2</sup>

(3) For constituting (upon the application of the council of any of the counties concerned) a joint committee representing all the administrative counties through which a river or any tributary stream passes,<sup>3</sup> for carrying out the provisions of the Rivers Pollution Prevention Act, 1876.

(4) For dealing with every case where the council of a borough is not the urban sanitary authority for the whole of its area, and such area is wholly or partly included in an urban sanitary district, and for determining the area of the county district, providing for the council of the borough becoming the district council.<sup>4</sup>

(5) For (a) altering the boundary of a county or borough; (b) providing for the union of a county borough with a county; (c) providing for the union of any counties or boroughs or the division of any

<sup>1</sup> Sections 4 and 39.

<sup>2</sup> Section 10. By the Local Government (Transfer of Powers) Act, 1903 (3 Edw. VII. c. 15), the Board may, by such Provisional Order, transfer these powers

to a particular county or county borough applying for them, as well as to county councils generally.

<sup>3</sup> Section 14.

<sup>4</sup> Section 52.

Local  
Government  
Board.

county ; or (d) constituting a borough with a population of 50,000 into a county borough.<sup>1</sup>

(6) For enabling a county council to put in force the compulsory powers of the Lands Clauses Acts for the purchase of land for the purposes of the Act.<sup>2</sup>

(7) For authorizing the exercise of borrowing powers by a county council, where its total debt, or a proposed loan, exceeds one-tenth of the annual rateable value of the county.<sup>3</sup>

London  
Government.

VII. Under the London Government Act, 1899<sup>4</sup> (62 & 63 Vict. c. 14), the Local Government Board may make a Provisional Order for the compulsory acquisition of land for the purpose of any of the powers or duties of a metropolitan borough council. The Board may also make Provisional Orders, on the application of the London County Council and of the majority of the metropolitan borough councils, transferring powers from the county council to all the borough councils and *vice versa* ; and, on the application of the County Council and of the common council of the City of London, for a similar transfer between these two authorities.

Water  
Board  
(Metropolis).

VIII. Under section 26 of the Metropolis Water Act, 1902 (2 Edw. VII. c. 41), the Local Government Board, when satisfied that an alteration is necessary either in the representation of boroughs and urban districts, or in the number of members, on the Water Board created by the Act, may make a Provisional Order for the purpose ; and in certain defined circumstances, on the application of the Water Board, they may make a Provisional Order to include a further urban district within the limits of supply.

The Local Government Board is also empowered to grant Provisional Orders under the following Acts :—

Brine-  
Pumping.

IX. Under the Brine-Pumping (Compensation for Subsidence) Act, 1891 (54 & 55 Vict. c. 40) : (a) for forming a Compensation District, and for establishing a Board entrusted with powers of rating brine-pumpers in order to meet the claims for compensation under the Act, and for a reserve fund and other expenses of the Board, on the application of any owner or owners of land in England or Wales of a rateable value of 2000*l.*, or of any local authority,

<sup>1</sup> Sections 54, 55 and 59.

<sup>2</sup> Section 65. The purposes of the Act are bridges, county asylums, county buildings, police stations, and assize courts, &c.

<sup>3</sup> Section 69 (2). Cf. further, s. 87 (2)

of the Act ; and s. 49, as extended by the Local Government Act, 1894, and Education (Administrative Provisions) Act, 1907.

<sup>4</sup> Sections 5, 28 (1), and Sch. II.

suffering through the subsidence of the ground caused by the pumping of brine; also (b) for altering the boundaries of a compensation district on a like application, or on the application of a brine-pumper.

Home  
Office.

X. Under the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57): Diseases (Animals).  
for enabling a Local Authority (as defined in the Act) to acquire land, by compulsory purchase under the provisions of the Public Health Act, 1875, s. 176,<sup>1</sup> for wharves or other purposes, or for use for the burial of carcases.

XI. And under section 8 of the Alkali, &c., Works Regulation Act, 1906 (6 Edw. VII. c. 14): Alkali Works.  
for preventing the discharge of noxious or offensive gases from cement works. This Act applies to the United Kingdom.

The Home Office is enabled, under the following Acts, to grant Provisional Orders for the purposes hereinafter enumerated:— The Home Office.

I. Under section 103 of the Explosives Act, 1875 (38 & 39 Vict. c. 17): Explosive substances.  
(on the application of any Local Authority, borough council, or district council, or of any persons dealing in any way with explosives within the jurisdiction of these authorities) for the repeal or alteration of any local Act, charter, or custom by which powers are conferred on any Local Authority respecting the manufacture, &c., of explosive substances.

II. Under section 4 of the Metropolitan Police Act, 1886 (49 & 50 Vict. c. 22): Metropolitan Police.  
(on the application of the Receiver for the Metropolitan Police) for the compulsory purchase, under the Lands Clauses Acts, of land, &c., required for the purposes of the metropolitan police force.<sup>2</sup>

III. Under section 22 of the Police Act, 1890 (53 & 54 Vict. c. 45): Police.  
(a) (on the application of a "police authority" as defined in the Act) for authorizing the payment, for such purposes as may seem expedient, of any assets of a pension fund which are not required for its liabilities, and the discontinuance of further investments of capital in cases where a pension fund is sufficient to meet its liabilities; and (b) (on the application of the authority controlling a fire brigade, fire police, or other "special force") for adjusting the financial relations between this special force and the police force of the same area, as regards the payment of pensions that are provided for, for both forces similarly, by any local Act.

<sup>1</sup> In the application of this Act to Scotland, section 90 of the Public Health (Scotland) Act, 1867, is substituted for this section.

<sup>2</sup> This power was extended by the Act 60 & 61 Vict. c. 26, s. 4, to the case of land required for the purpose of the metropolitan police courts.

Home  
Office.

Under section 8 (2) of the Police Act, 1893 (56 & 57 Vict. c. 10) : for bringing into harmony with that Act any provisions as to a fire brigade or fire police contained in a local Act. These Acts extend to England and Wales.

Marriages.

IV. Under the Provisional Order (Marriages) Act, 1905 (5 Edw. VII. c. 23) : for removing doubts as to the validity of marriages solemnized in England which appear to the Secretary of State to be of doubtful validity by reason of some informality.

Work-  
men's  
Compensation.

V. Under section 8 (7) of the Workmen's Compensation Act, 1906 (6 Edw. VII. c. 58) : after inquiry held on the application of employers or workmen engaged in an industry to which the provisions of the Act relating to compensation for industrial disease apply, to make a Provisional Order requiring all employers to insure in a mutual trade insurance society for insurance against the risks contemplated in the section, when such a society exists in which a majority of the employers are insured.

Mental  
De-  
ficiency.

VI. Under section 29 of the Mental Deficiency Act, 1913 (3 & 4 Geo. V. c. 28) : for the joint exercise and performance of powers under the Act of two or more local authorities by the constitution of a joint committee or board or otherwise.<sup>1</sup>

Police  
powers.

VII. In some cases where under a local Act power has been given to a corporation to deal with sundry police matters for a limited period, the Secretary of State has been empowered to continue such power by Provisional Order.<sup>2</sup>

The Board  
of Trade.

The Board of Trade is invested under the following Acts with large and extensive powers in the granting of Provisional Orders and Certificates, namely :—

Piers and  
Harbours.

I. Under the General Pier and Harbour Acts, 1861 and 1862 (24 & 25 Vict. c. 45, and 25 & 26 Vict. c. 19), Provisional Orders may be granted for the formation, management, and maintenance of piers and harbours throughout the United Kingdom<sup>3</sup> (except parts of the Rivers Thames, Mersey, Clyde, Wear, Humber,<sup>4</sup> and Tyne), the estimated expenditure on which shall not in any case

<sup>1</sup> If all the authorities agree, such an order does not require confirmation by Parliament, s. 29 (2).

<sup>2</sup> Kingston-upon-Hull Corporation Act, 1907, 7 Edw. VII. c. cvi. s. 4 (5). Halifax Corporation Act, 1 & 2 Geo. V. c. cxiii. s. 79 (5). Cf. Halifax Corporation Act Provisional Order Confirmation Act, 1910, 6 & 7 Geo. V. c. xxxii.

<sup>3</sup> As to the application of the Acts in the case of small fishery harbours, see p. 778.

<sup>4</sup> Under the Humber Conservancy Act, 1871, the Board may make Provisional Orders for certain purposes connected with the Humber Conservancy Commissioners.

exceed 100,000*l.*, or for the levying of rates at existing piers and harbours. Such Provisional Orders may include provisions for the election or appointment of commissioners as undertakers, the incorporation of a company, and the making of bye-laws by the undertakers; and for the taking of land on lease, the levying of rates, and the borrowing of money on the security of the rates.

Board of  
Trade.

II. Under the Pilotage Act, 1913 (2 & 3 Geo. V. c. 31), the Board of Trade may make orders for the establishment, delimitation and rearrangement of pilotage districts, for the incorporation, constitution and procedure of pilotage authorities, for the discontinuance or continuance in whole or in part of any Act, order, charter, &c., in any pilotage district, for the provision of compensation of pilots in certain cases, and for other kindred purposes. An Order made under this Act only requires confirmation by Parliament if it is an Order made for the purposes of Part I. of the Act (which relates to the revision of pilotage organization) or if a petition against it is presented to the Board of Trade within a specified time by a person interested in pilotage organization. The Board of Trade may also submit, with or without modifications, to Parliament for confirmation a bye-law of a pilotage authority relating to exemption from compulsory pilotage, which the Board has not been able to confirm under the terms of section 11 (4) of the Act.<sup>1</sup> These provisions apply to the United Kingdom<sup>2</sup> and the Isle of Man.

III. Under the Gas and Water Facilities Act, 1870 (33 & 34 Vict. c. 70), and the Gas and Water Facilities Amendment Act, 1873 (36 & 37 Vict. c. 89), the Board of Trade may make Provisional Orders where powers are required (a) for constructing and maintaining gasworks or waterworks in districts where there is not an existing supply of gas or water by a company or person authorized by Parliament; (b) for raising additional capital for these purposes; (c) for authorizing agreements between companies or persons for the joint supply of gas or water or for the amalgamation of such undertakings. These Acts apply to the United Kingdom excepting the Metropolis.

IV. Under the Tramways Act, 1870 (33 & 34 Vict. c. 78): the Board may make a Provisional Order for authorizing the construction of tramways in any district in England and Wales, or for amending a previous order, on the application (a) of the Local Authority of such district, subject, however, to the special approval of the

<sup>1</sup> Sections 7, 11, and Sch. I.

<sup>2</sup> Section 61.

Board of  
Trade.

application by a majority of its members in manner prescribed by the Act; <sup>1</sup> and (b) of any person, corporation, or company, with the consent of the Local or Road Authority: but this consent may be dispensed with if the Board be satisfied, after inquiry, that two-thirds of the proposed tramway is to be laid in districts where these authorities consent to its construction.

Under the Military Tramways Act, 1887 (50 & 51 Vict. c. 65), and the Naval Works Act, 1899 (62 & 63 Vict. c. 42), the Board of Trade may make Provisional Orders, on the application respectively of the War Office (by the Secretary of State) and of the Admiralty, authorizing these departments to construct tramways on land belonging to them and to acquire, <sup>2</sup> if need be compulsorily, any further land for this object that they may require.

Electric  
lighting  
and  
power.

V. Under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), which applies to the United Kingdom, the Board of Trade may grant a Provisional Order <sup>3</sup> for authorizing any Local Authority, company, or persons to supply electricity for any public or private purposes within any area, for such period limited or unlimited as the Board may think proper. By the amending Act of 1888, <sup>4</sup> the consent is required of the Local Authority of any district in which such supply is proposed, unless the Board be of opinion that this consent ought to be dispensed with and make a special report to Parliament of the grounds on which they have so decided. The latter Act contains a reservation that the grant to supply electricity to any area should not hinder or restrict the granting of a licence or Provisional Order to the Local Authority or others within the same area. By the Electric Lighting Act, 1909 (9 Edw. VII. c. 34), the objects for which Provisional Orders may be granted are extended to include the supply of electricity in bulk, and beyond the promoters' area of supply, the compulsory acquisition of land within or without the area of supply, and the joint exercise of electric lighting powers by local authorities.

Railway  
and Canal  
rates and  
charges.

VI. Under the Railway and Canal Traffic Act, 1888 <sup>5</sup> (51 & 52 Vict.

<sup>1</sup> Sch. A. part iii.

<sup>2</sup> For this purpose the provisions of the Lands Clauses Acts may be incorporated with the Provisional Order, 50 & 51 Vict. c. 65, s. 5.

<sup>3</sup> As to the form of Orders issued under the Electric Lighting Acts, cf. the Electric Lighting (Clauses) Act, 1899, 62 & 63 Vict. c. 19.

<sup>4</sup> 51 & 52 Vict. c. 12: See also 53 & 54 Vict. c. 13 as to local authority in Scotland.

<sup>5</sup> See also 54 & 55 Vict. c. 12. As to the provisions regarding canals in the Railway and Canal Traffic Act, 1888, see ss. 36, 45, &c. By section 45, Provisional Orders may be framed to deal with "derelict" canals, i.e. canals which have for



Board of  
Trade.

c. 25), as amended by the Railway and Canal Traffic Act, 1892 (55 & 56 Vict. c. 44), Provisional Orders may be granted for fixing railway rates for merchandise. Every railway company is directed to submit to the Board of Trade a revised classification of merchandise traffic, and a revised schedule of maximum rates, including terminal charges. If the Board, after hearing all the parties whom it considers entitled to be heard on the subject, comes to an agreement with the railway company, it must embody the agreed classification and schedule in a Provisional Order. If the railway company fail to submit this classification and schedule within the prescribed time, or if the Board (who, in this case also, hear the parties concerned) is unable to agree with the company, the Board may and, if so desired by the company, must embody in a Provisional Order the classification, &c., which in its opinion ought to be adopted by the railway company. It may be assumed that in the latter case the railway company would be the opponents of the Order when, following the ordinary course, it is referred to a committee for consideration. At any time after the confirmation of the Order, at the instance of any railway company or of any person giving twenty-one days' notice to the railway company, the Board has the power of making amendments in it, and these amendments take effect after publication in the *Gazette*.

VII. Under the Railways (Electrical Power) Act, 1903 (3 Edw. VII. c. 30), the Board of Trade, upon the application of a railway company, may make an Order authorizing the introduction and use, by the company, of electrical power. This order takes effect without confirmation by Parliament, unless it contains power to acquire land otherwise than by agreement, in which case it is required to be confirmed in a bill. Railways  
(Electrical  
Power).

VIII. Under the Port of London Act, 1908 (8 Edw. VII. c. 68), the Board of Trade is empowered to make Provisional Orders<sup>1</sup>:— Port of  
London.

(1) Authorizing the Port of London Authority to construct docks

three or more years been disused for navigation or have become unfit for navigation or are a nuisance to neighbouring lands. Such canals may be abandoned by the existing proprietors under the authority of a warrant of the Board of Trade, and the warrant may be granted on condition that the canal be transferred to any person, body of per-

sons, or local authority. A scheme for its future management may then be framed by the Board and embodied in a Provisional Order, to be confirmed by Parliament. (Cf. e.g. the Thames and Severn Canal Order Confirmation Act, 1901, 1 Edw. VII. (local and personal) c. iii.).

<sup>1</sup> Section 33, Sch. IV.

Board of Trade. and other works, to acquire land in connection therewith, and to impose dues and rates for the use of such works ; <sup>1</sup>

(2) extending the area within which the Authority can exercise powers of dredging ; <sup>2</sup>

(3) fixing maximum port rates on goods ; <sup>3</sup>

(4) making amendments and modifications of the enactments relating to the Conservators of the River Thames rendered necessary by the passing of the Act.<sup>4</sup>

Trade Boards.

IX. Under section 1 of the Trade Boards Act, 1909 (9 Edw. VII. c. 22), the Board of Trade may make a Provisional Order applying the Act to any trade to which it does not apply at the time of making the order and, when the conditions of employment in a trade have been so altered as to render unnecessary the application of the Act, for providing that the Act shall cease to apply to it.

Railway Companies' Accounts, &c.

X. Under section 3 of the Railway Companies (Accounts and Returns) Act, 1911 (1 & 2 Geo. V. c. 34), the Board of Trade may alter or add to the form of accounts and returns to be prepared annually by railway companies, which is set out in the First Schedule to the Act. If such alterations are objected to and a certain proportion of the railway companies are not satisfied with the way in which such objections have been met by the Board of Trade, the Order becomes provisional only and is of no effect until it is confirmed by Parliament.

Copy-right.

XI. Under section 9 (3) of the Copyright Act, 1911 (1 & 2 Geo. V. c. 46), power is given to the Board of Trade at any time after the expiration of seven years from the commencement of the Act to make a Provisional Order for altering the rate of royalties on records, perforated rolls or other contrivances by which sounds may be mechanically reproduced.

Light Railways.

XII. Under section 1 of the Light Railways Act, 1912 (2 & 3 Geo. V. c. 19), the Board of Trade is enabled to submit to Parliament in the form of a Provisional Order any order under the Light Railways Act, 1896, which has not been confirmed by the Board under section 9 (3) of the latter Act.

Lloyd's Signal Stations.

XIII. Under Lloyd's Signal Stations Act, 1888 (51 & 52 Vict. c. 29), power is given to the Board of Trade to make Provisional Orders applying the Lands Clauses Acts to lands sought to be acquired by Lloyd's otherwise than by agreement.

<sup>1</sup> Section 6. For the conditions under which such an order can be made without reference to Parliament, see sub-section 2.

<sup>2</sup> Section 7 (2) (d).

<sup>3</sup> Section 13.

<sup>4</sup> Section 8 (8).

XIV. In addition to the Provisional Orders, already mentioned, the Board of Trade is empowered to grant Provisional Certificates for matters relating to railways, in pursuance of several statutes presently to be mentioned. A Provisional Certificate is similar to a Provisional Order, its purpose being to facilitate and simplify legislation in matters otherwise the subject of a private bill. If it be unopposed, it does not require to be submitted in a bill for the purposes of confirmation by Parliament. But if there be opposition from a railway or canal company affected by the Certificate, notice of such must be lodged at the Office of the Board of Trade, within the period prescribed by an Act of 1870 (33 & 34 Vict. c. 19), and the Certificate, scheduled to a public bill, is submitted to Parliament for confirmation, and thereafter treated in the same manner as an opposed Provisional Order. These Certificates may be granted by the Board :—

Board of  
Trade.  
Railways,  
Provi-  
sional Cer-  
tificates.

(1) Under the Railway Companies Powers Act, 1864 (27 & 28 Vict. c. 120); for enabling railway companies (a) to enter into working agreements *inter se*, (b) to extend the time for the sale of their superfluous lands, or (c) to raise additional capital; and—by the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119)—for making other provision as to the management of a railway company.

(2) Under the Railways Construction Facilities Act, 1864 (27 & 28 Vict. c. 121); (a) for the construction of railways, the purchase of the land being first contracted for, and all landowners and other parties beneficially interested consenting; (b) for the deviation of existing railways, or railways in course of construction; (c) for the execution of new works connected with existing railways; and (d) for the incorporation of a company for the purposes of the Act.

By an Act of 1889,<sup>1</sup> the Board of Agriculture—or as it has been more lately styled,<sup>2</sup> the Board of Agriculture and Fisheries—was constituted.

The Board  
of Agri-  
culture  
and  
Fisheries.

Under this Act the Board was invested with the powers and duties of the Inclosure Commissioners<sup>3</sup> (who had more lately been entitled,

<sup>1</sup> 52 & 53 Vict. c. 30.

<sup>2</sup> 3 Edw. VII. c. 31.

<sup>3</sup> The earliest attempt to provide, by a general law, for the objects usually sought by the promoters of private bills, was that of "The Inclosure Act, 1801." By that Act several provisions which had been usually inserted in each Act of inclosure were consolidated, and the neces-

sary proofs before Parliament were facilitated when such Acts were applied for: but the necessity of applying for separate Acts of inclosure was not superseded. In 1836, a general law, "The Inclosure Act, 1836," was passed to facilitate the inclosure of open and arable land; and in 1845, "The Inclosure Commissioners" were constituted, to whom

Board of  
Agri-  
culture.  
—

by the Settled Land Act, 1882, "The Land Commissioners for England"); and it is consequently the authority by whom the Provisional Orders and schemes are now made under the following Acts:—

Inclo-  
sures,  
commons,  
&c.

I. Under the Commons Act, 1876 (39 & 40 Vict. c. 56): (1) for the regulation<sup>1</sup> of a common; (2) for the inclosure of a common or parts of a common. The application for the Order is to be made by persons interested in any common, representing at least one-third in value of the interests proposed to be affected. If on consideration of the application it be deemed expedient to proceed with the case, a report, certifying the expediency of the Provisional Order, is made to Parliament by the Department and is referred to a committee specially appointed by the House of Commons to consider, and to report upon, every such report "before a bill is brought in to confirm such Order."<sup>2</sup> This select committee require the Board to give notice, in the locality affected, of the meeting of the committee, in order that persons objecting to the Order may appear and be heard. The reference of the Order to this committee does not dispense with its subsequent consideration by the committee to whom the bill for its confirmation may be referred by the Committee of selection.<sup>3</sup>

II. Under the Metropolitan Commons Acts, 1866 to 1898:<sup>4</sup> for making a scheme for the local management and improvement of a metropolitan common, on the presentation of a memorial by the lord of the manor, by any commoners, by certain local authorities, or by twelve or more ratepayers of the parish in which the common is situated. After certain preliminaries required by the Act of 1866, the scheme may be approved and certified by the Board, who make an annual report to Parliament in which is set forth in full every

many of the powers previously exercised by Parliament were entrusted under this and numerous other Acts usually cited together as the Inclosure Acts; of these the most important is the Commons Act, 1876 (*vide text*), the Acts of 1801 and 1836 being repealed in 1899 by the Act 62 & 63 Vict. c. 30, s. 23 and Sch.

<sup>1</sup> The term "regulation" includes "adjustment of rights" and "improvement of a common," and these terms again are particularly explained by the Act. The Act also contains elaborate provisions for the protection of public and private interests, including rules for the guidance both of the persons making

the application and of the department in making the Provisional Order, notably in the latter case for holding a public inquiry on the spot by an assistant commissioner. To meet the expenses of regulation a Provisional Order may include a power to sell part of a common, Commons (Expenses) Act, 1878 (41 & 42 Vict. c. 56, s. 2).

<sup>2</sup> 134 C. J. 29. 170; 153 ib. 79; &c.

<sup>3</sup> 153 C. J. 126. 134. 183; ib. 213. 214. 268; &c.

<sup>4</sup> 29 & 30 Vict. c. 122; 32 & 33 Vict. c. 107; 41 & 42 Vict. c. 71; 61 & 62 Vict. c. 43.

scheme certified during the past year and all the proceedings held in connection with it; and the confirming bill, if a petition be presented against the scheme, is treated as an opposed private bill. By the Act of 1866, no application for the inclosure of a metropolitan common can be entertained by the department.

Board of  
Agri-  
culture.

III. Under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133): Drainage.  
(1) for putting in force the powers of the Lands Clauses Acts for the compulsory purchase of lands required for "the construction of new works" defined in the Act, on the application of commissioners of sewers and drainage boards; and (2) for constituting elective drainage boards for separate drainage districts, on the application of the owners of one-tenth part of an area of land requiring a system of combined drainage, and under the Land Drainage Act, 1914 (5 & 6 Geo. V. c. 4), for constituting a body for the purpose of executing a work of drainage, embankment or defence against water, and for authorizing the execution of the work.<sup>1</sup>

IV. Under the Thames Valley Drainage Act, 1871:<sup>2</sup> for enabling the commissioners thereby appointed, either at the instance of a district board or at their own desire, to put in force, for the purpose of carrying out any of the works authorized by the Act, the compulsory powers of the Lands Clauses Acts for the purchase of land.

V. Under the Sea Fisheries Acts, 1868 and 1884,<sup>3</sup> the Board of Agriculture and Fisheries, exercising powers formerly possessed by the Board of Trade,<sup>4</sup> may make a Provisional Order (on the application of "any person desirous of obtaining such an Order") for the establishment or improvement, and for the maintenance and regulation, of an oyster and mussel fishery, or cockle fishery, on the sea-shore in England and Wales—including, if desirable, the constitution of a board or body corporate for the purpose of the Order; and the Board may also by a Provisional Order amend any such Order already granted and confirmed. In certain circumstances, however, these Orders do not require confirmation by Parliament.<sup>5</sup> For Scotland these powers are vested in the Secretary for Scotland.<sup>6</sup>

Oyster  
Fisheries,  
&c.

VI. Under the Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), Salmon Fisheries.

<sup>1</sup> The power of making these orders is limited to two years from the passing of the Act, except for the purpose of amending a provisional order made under the Act.

<sup>2</sup> 34 & 35 Vict. (Local and Personal) c. olviii.

<sup>3</sup> 31 & 32 Vict. c. 45, Part III.; 47 & 48 Vict. c. 27.

<sup>4</sup> This transfer of powers was effected by the Act 3 Edw. VII. c. 31.

<sup>5</sup> 40 & 41 Vict. c. 42, s. 7.

<sup>6</sup> 48 & 49 Vict. c. 70, s. 11; and 50 & 51 Vict. c. 52, s. 2 (3).

Board of the Board, exercising powers formerly vested successively in the  
 Agri- Home Office and the Board of Trade,<sup>1</sup> may grant a Provisional  
 culture. Order empowering any board of conservators of a salmon river in  
 England or Wales (who apply to them for the purpose) to put in  
 force the compulsory powers of the Lands Clauses Acts for the purchase  
 of any weir or other artificial obstruction hindering the passage of  
 fish, excepting a weir constructed under Act of Parliament for the  
 purposes of navigation or for supplying a town with water; and  
 empowering the proprietor of a fishery or a board of conservators  
 to purchase land for a fish pass. Under the Salmon and Freshwater  
 Fisheries Act, 1907 (7 Edw. VII. c. 15) a provisional order may be  
 granted for the regulation of salmon and freshwater fisheries within  
 an area defined in the order for constituting a board of conservators,  
 for the imposition of contributions on private fisheries in the area,  
 and for the acquisition of foreshore and of an easement over adjoining  
 land for erecting fixed engines for salmon.

Small Under the Fishery Harbours Act, 1915 (5 and 6 Geo. V. c. 48),  
 harbours. the powers conferred on the Board of Trade under the General  
 Pier and Harbour Acts, 1861 and 1862 (see p. 770), were in the case  
 of small harbours principally used by the fishing industry transferred  
 with modifications to the Board of Agriculture. The power of  
 making orders under the Act is limited except for the purpose of  
 amending existing orders to the period of two years from the passing  
 of the Act. In some cases the orders made under the Act do not  
 require confirmation by Parliament.<sup>2</sup>

The Privy Under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50),  
 Council. as amended in certain details by the School Boards Act, 1885 (48  
 & 49 Vict. c. 38): where a petition for a charter of incorporation is  
 referred to a Committee of Council, and it is proposed to extend the  
 Municipal Municipal Corporation Acts to the borough to be created, the Com-  
 Corpora- mittee of Council may settle a scheme for the adjustment of the powers,  
 tions. property, &c., of the existing Local Authority, and this scheme, if  
 unopposed, may be confirmed by an Order in Council. But if,  
 within a month after its publication by the Department, it is opposed  
 by any Local Authority whom it affects, or by a certain proportion  
 of the owners and ratepayers, the scheme, if the Committee of Council  
 think that it should be confirmed, is submitted to Parliament in a

<sup>1</sup> For transfer of powers, see 49 & 50 Vict. c. 39, s. 3; 3 Edw. VII. c. 31.

<sup>2</sup> Section 2 (3).

bill and treated in the same way as a Provisional Order.<sup>1</sup> The same procedure *mutatis mutandis* is prescribed in the case of certain schemes settled by the same department under the London Government Act, 1899 (62 & 63 Vict. c. 14).<sup>2</sup>

Privy  
Council.

By the Education Acts, 1870 to 1907, the Board of Education, on the application of a local education authority (including the London County Council) in England or Wales, are empowered to grant a Provisional Order (after an inquiry) empowering the authority to put in force the compulsory powers of the Lands Clauses Acts for the purchase of a site for a school including a school for higher education.<sup>3</sup>

The Board  
of Educa-  
tion.

By the Military Lands Act, 1892 (55 & 56 Vict. c. 43), which repealed the Ranges Act, 1891, the Secretary of State was enabled to grant Provisional Orders for the compulsory acquisition of land for military purposes, by himself, by a volunteer corps, or by a county or borough council in behalf of such volunteer corps or a yeomanry corps.<sup>4</sup> The same powers have since been given to the Admiralty under the provisions of the Naval Works Act, 1895 (58 & 59 Vict. c. 35),<sup>5</sup> and the Naval Lands (Volunteers) Act, 1908 (8 Edw. VII. c. 25).

War Office  
and Ad-  
miralty.

By the Telegraph Acts, 1892 and 1908 (55 & 56 Vict. c. 59 and 8 Edw. VII. c. 33), the powers of the Postmaster-General were extended by Provisional Order,<sup>6</sup> and if he considered that a district

The Post  
Office.

<sup>1</sup> Cf. Municipal Corporations (Scheme Confirmation) Bills, 1886 and 1905, 141 C. J. 237, 252, 288; 460 ib. 122; &c.

<sup>2</sup> Cf. London Government Scheme (Borough of Southwark) Confirmation Bill, 1902 (157 C. J. 192, 247, 263); and London Government Scheme (London and Middlesex) Bill, 1905, Minutes of Evidence, 4th July, before the Committee (H. C.) on Group J.

<sup>3</sup> By the Education Act, 1902 (2 Edw. VII. c. 42, ss. 17 (7), 21), the Board of Education were also empowered to make Provisional Orders for the constitution of education-committees in those cases where no scheme which they could approve had been made for this purpose, as prescribed in the Act, within a year after its passing. Two such Provisional Orders (relating to Swansea and to Cardiff) were made and confirmed in 1904.

<sup>4</sup> Adopted as to the territorial force by regulation, see Statutory Rules and

Orders, 1912, No. 1814.

<sup>5</sup> Cf. 156 C. J. 201, &c.

<sup>6</sup> When land is proposed to be taken for the purposes of the Post Office the procedure adopted is that of a public bill containing all the enacting provisions without the interposition of a Provisional Order (scheduled to a confirming public bill); but if while the bill is pending in either House of Parliament a petition is presented against it, the bill is thereupon treated in the same manner as an opposed private bill. By the Post Office (Land) Act, 1881 (44 & 45 Vict. c. 20), the Postmaster-General is empowered to give three months' notice to all persons interested in the land proposed to be compulsorily taken, and the Treasury, after a local public inquiry into the objections of such persons, may bring in a public bill for exercising the powers of the Lands Clauses Acts for the compulsory purchase of land.



Post  
Office.

was debarred from the public convenience of telegraphic communication, except at unreasonable cost or on unreasonable conditions, owing to the refusal or failure of any person to consent to the construction or maintenance of a work by the Postmaster-General, he might apply to the Railway and Canal Commission, who might make an order dispensing with such consent; and if the person whose consent had been so dispensed with petitioned the Commission that the order be laid before Parliament, it became a Provisional Order, and was treated accordingly. Under the Telegraph (Construction) Act, 1916, however, procedure by Provisional Order in these cases was abrogated.<sup>1</sup>

The  
Charity  
Commission.

By the Charitable Trusts Acts, 1853 and 1854 (16 & 17 Vict. c. 137 and 18 & 19 Vict. c. 124), where a new scheme for the management of a charity cannot be carried into complete effect by the Court of Chancery or other court under the jurisdiction created by the Act, or otherwise than by the authority of Parliament, the Board of the Charity Commissioners (on the application of the trustees or others concerned in the management, or interested in the benefits, of a charity, or upon the report of an inspector, or upon information otherwise obtained by the Board) are enabled provisionally to approve and certify a new scheme which, set forth in all its details in an annual report to Parliament, may be confirmed by an Act of Parliament, such Act to be deemed a public general Act; and the confirming bill is treated throughout as a public bill, and is not referred to the committee of selection.<sup>2</sup>

Commissioners of  
Works.  
Ancient  
Monuments.

Under the Ancient Monuments Consolidation and Amendment Act, 1913 (3 & 4 Geo. V. c. 32), which is limited to Great Britain, the Commissioners of Works, upon a report of the Ancient Monuments Board, or, in a case of emergency without receiving any such report, may make an order placing an ancient monument as defined by the Act under the protection of the Commissioners. Such an order has effect for eighteen months after the date on which it is made, but ceases to have effect at the end of that period unless it has been confirmed by Parliament meanwhile.

Development  
Commissioners.

The orders made by the Development Commissioners for the

<sup>1</sup> 6 & 7 Geo. V. c. 40, s. 1.

<sup>2</sup> Jewish United Synagogues Bill, 1870; Whitley Tancred's Charities Bill, 1871; Birstal Wesleyan Chapel Bill, 1890; Sunderland's Charity Bill, 1891;

Addenbrooke's Hospital Bill, 1903, &c. In 1807, John Kendrick's Loan Charity (Reading Grammar School) Bill was a private bill and was referred to the committee of selection.



compulsory acquisition of land do not usually require confirmation by Parliament, but provision is made by the Development and Road Improvement Funds Act, 1909 (9 Edw. VII. c. 47), that where the land to be acquired includes any common, open space, or allotment, the order is provisional only, unless the conditions laid down by the Act relative to the acquisition of such land are complied with.

Develop-  
ment  
Commis-  
sioners.

The very extensive powers conferred on the Secretary for Scotland, by the Private Legislation Procedure (Scotland) Act, 1899 (62 & 63 Vict. c. 47), of making Orders that are submitted to Parliament for confirmation in a bill, are dealt with in the ensuing chapter. That Act does not affect the power which, at the time of its passing, was already vested in the Secretary for Scotland of granting Provisional Orders under other Statutes; but the special procedure prescribed, by section 9 of the Act, in regard to bills for the confirmation of certain orders issued under its provisions (see p. 799) is made applicable "with the necessary modifications" to bills for the confirmation of orders made by the Secretary for Scotland under the provisions of any Act already in force at the time of its passing. The statutes (other than the Private Legislation Procedure (Scotland) Act of 1899) under which Provisional Orders may be granted may be shortly summarized.

The Secre-  
tary for  
Scotland.

I. The Secretary for Scotland is empowered to make Provisional Orders under the Public Parks (Scotland) Act, 1878 (41 & 42 Vict. c. 8), for enabling local authorities to acquire and lay out land for public parks and pleasure-grounds, and to put in force the powers of the Lands Clauses (Scotland) Acts, for compulsory powers of purchase, for this purpose.

Public  
Parks  
(Scot-  
land).

II. Under the Police (Scotland) Act, 1890 (53 & 54 Vict. c. 67), the Secretary for Scotland may make provisional orders (a) for authorizing the application of any excess over liabilities of a pension fund; and (b) on the application of the police authority, for the discontinuance of further investments of capital by reason of a pension fund being sufficient to meet its liabilities.

Police  
(Scot-  
land).

III. Under the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), as read in conjunction with the Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), the Secretary for Scotland is enabled to issue Provisional Orders, on application being made for them as described in the Act, (a) to alter the number of the magistrates and council of any burgh, where they are the "commissioners" <sup>1</sup> under the

Burgh  
Police  
(Scot-  
land) Act.

<sup>1</sup> Cf. 63 & 64 Vict. c. 49, s. 7.

Secretary for Scotland. Act; (b) to confer additional powers for the better carrying out of the purposes of the Act in any burgh to which the Act applies, for the repeal of any exemption from rating, or for certain other specified objects; and (c) to provide for the amalgamation of contiguous or adjacent burghs for the purposes of the Act and for municipal purposes, or for carrying on jointly such administration, or for jointly executing conduits, sewers, or drainage works. By section 7.(7) of the House Letting and Rating (Scotland) Act, 1911 (1 & 2 Geo. V. c. 53), the powers of the Secretary for Scotland to issue provisional orders under the Burgh Police (Scotland) Act, 1892, are applied to the settlement of doubts as to the rating of small dwellings.

Sea Fisheries (Scotland).

IV. The power which was formerly vested in the Board of Trade, under the Sea Fisheries (Clam and Bait) Act, 1881 (44 & 45 Vict. c. 11), of making a Provisional Order for the protection of any clam or bed bait in the United Kingdom, and which was repealed as regards England and Wales by the Sea Fisheries Regulation Act, 1888 (51 & 52 Vict. c. 54), was transferred as regards Scotland to the Fishery Board (Scotland) and the Secretary for Scotland by the Sea Fisheries (Scotland) Amendment Act, 1885 (48 & 49 Vict. c. 70), and the Secretary for Scotland Act, 1887 (50 & 51 Vict. c. 52). By the same two Acts a similar transference was made as regards Scotland of the powers formerly exercised by the Board of Trade, of making Provisional Orders as to Oyster Fisheries (see p. 777).

Local Government (Scotland) Acts.

V. Under the Local Government (Scotland) Acts, Provisional Orders may be granted (a) for the transfer to county councils of the powers of government departments and other authorities; (b) for altering, on the representation of a county or town council, the boundaries or contents of any county, burgh, or parish; and (c) for constituting a joint committee representing counties and burghs for the purposes of the Rivers Pollution Prevention Act, 1876.<sup>1</sup>

The Local Government Board (Scotland). Allotments. Public Health (Scotland).

VI. By the Local Government (Scotland) Act, 1894, the Local Government Board for Scotland was constituted, with the Secretary for Scotland as President, and was empowered, in certain circumstances, to grant an order—which, if opposed, has to be confirmed by Act of Parliament—for securing land for allotments.<sup>2</sup>

VII. Under the Public Health (Scotland) Act, 1897,<sup>3</sup> the Board is also empowered, on the application of a local authority as defined

<sup>1</sup> 52 & 53 Vict. c. 50, ss. 15. 51. 55. 91.  
93; 57 & 58 Vict. c. 58, s. 46.

<sup>2</sup> 57 & 58 Vict. c. 58, ss. 25. 26.  
<sup>3</sup> 60 & 61 Vict. c. 38, s. 145.

in this Act, to make an order enabling such authority to put in force, for the purposes of the Act, the powers of the Lands Clauses Acts with respect to the compulsory purchase of land. The order so made is only provisional if opposed.

Local  
Government  
Board  
(Scotland).

VIII. Under the Education (Scotland) Act, 1878 (41 & 42 Vict. c. 78), the Scotch Education Department, on the application of a school board, may make a Provisional Order for putting in force the powers of the Lands Clauses (Scotland) Acts for the purchase of land otherwise than by agreement for the purposes of the Education Acts.

Education  
Department  
(Scotland).

In addition to the powers of granting Provisional Orders under statutes which are limited to Scotland, the powers under the Redistribution of Seats Act, 1885 (see p. 767), the Housing of the Working Classes Acts, 1890 to 1909 (see p. 766), the Alkali, &c., Works Act, 1906 (see p. 769), and the Electric Lighting Act, 1909 (see p. 772), are entrusted in Scotland to the Secretary for Scotland or the appropriate department in Scotland.

Under the Tramways (Ireland) Acts, the Lord-Lieutenant is authorized to grant orders which in certain circumstances must be embodied in a bill and confirmed by Parliament, the confirming bill being treated in all respects as a public bill and not in the manner usual with Provisional Order bills.<sup>1</sup>

The Lord-  
Lieutenant of  
Ireland in  
Council.

By the Light Railways (Ireland) Act, 1889 (52 & 53 Vict. c. 66), the Lord-Lieutenant is invested with a similar power of making an Order in Council with regard to the construction of light railways in Ireland.

Tram-  
ways  
(Ireland).  
Light  
Railways  
(Ireland).

The powers of making Provisional Orders possessed by the Local Government Board for Ireland under the Redistribution of Seats Act, 1885, the Housing of the Working Classes Act, 1890, and the Electric Lighting Act, 1909, so far as Ireland is concerned, are the same as those of the Local Government Board for England, which have already been noticed; while those under the Public Health (Ireland) Acts, 1878 to 1900, similar in many respects to the Public Health Act for England, are for the following purposes:—

The Local  
Govern-  
ment  
Board  
(Ireland).

(1) For the alteration of sanitary districts, by separating from a rural sanitary district any town or district, in which there shall be town or township commissioners under an Act of Parliament, and constituting it an urban sanitary district, or by including it in any adjoining urban sanitary district; and also by adding any town or

Public  
Health  
(Ireland).

<sup>1</sup> E.g. Tramways Order in Council (Ireland), &c., Bills, 1891, 1898, &c.

Local  
Govern-  
ment  
Board  
(Ireland).

township so constituted to the rural sanitary district in which it is situated. Such Order can only be made upon the petition of one or other of the towns, townships, or districts which it affects; but, under the provisions of the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), it is only in certain circumstances that it requires confirmation by Act of Parliament.

(2) For the compulsory purchase of land under the powers of the Lands Clauses Acts (as defined by section 23 (c) of the Interpretation Act, 1889, and amended by section 8 of the Public Health (Ireland) Act, 1896), for the purposes of the Public Health (Ireland) Acts, 1878 to 1900, and other Acts incorporating provisions of those Acts with respect to Provisional Orders.

(3) For the transfer of a burial-ground from one burial board to another.

Under the same conditions as are enacted for England by the Public Health Act, 1875 (see p. 763), already mentioned, the Board may make Provisional Orders (4) for repealing (wholly or partially), altering, or amending local Acts; (5) for the formation of united districts; (6) for the settlement of doubts and differences arising out of any transfer of any powers or property under the Public Health (Ireland) Acts, 1878 to 1900, or Provisional Order made thereunder; (7) for authorizing the supply of gas by an urban sanitary authority; and (8) for the constitution<sup>1</sup> of port sanitary authorities.

Local  
Govern-  
ment  
Acts.

Under the Local Government (Ireland) Act, 1898,<sup>2</sup> and the amending Act of 1901,<sup>3</sup> the Board may make provisional orders (a) for transferring to county councils powers of local bodies;<sup>4</sup> (b) for extending the borrowing powers of guardians;<sup>5</sup> (c) for revising the financial relations between county and urban districts;<sup>6</sup> and (d) for adapting local Acts to the provisions of the Act of 1898 and of any Order in Council made thereunder.<sup>7</sup>

The Office  
of Public  
Works  
(Ireland).

The Commissioners of Public Works in Ireland are enabled to grant Provisional Orders under the Drainage and Improvement of

<sup>1</sup> Cf. 59 & 60 Vict. c. 54, s. 9.

<sup>2</sup> 61 & 62 Vict. c. 37, s. 101 (4), &c. -

<sup>3</sup> 1 Edw. VII. c. 28, s. 3. The powers of the Board are further extended by Orders in Council under the Act of 1898.

<sup>4</sup> 61 & 62 Vict. c. 37, s. 20.

<sup>5</sup> *Ib.* s. 61 (6).

<sup>6</sup> *Ib.* s. 71; and 1 Edw. VII. c. 28,

s. 3.

<sup>7</sup> 61 & 62 Vict. c. 37, s. 108 (2). By the Local Government (Ireland) (No. 2) Act, 1900 (63 & 64 Vict. c. 41) the Board were empowered to make an order annulling or varying the provisions of the Local Government (Procedure of Councils) Order, 1899.

Lands (Ireland) Acts. Under the Act of 1863,<sup>1</sup> orders may be made for constituting into a separate elective drainage district, land liable to be flooded or capable of improvement by drainage, and any person interested in such land may make application to the commissioners for the purpose. Under the Act of 1878,<sup>2</sup> the proprietors of a moiety in value of it must be in favour of the scheme, and no provisional order may be made if the proprietors of one-third part in value of lands in the district have expressed their dissent before a specified time. By the Act of 1880,<sup>3</sup> Provisional Orders may be granted for enabling a drainage board to execute works within the district of any other drainage district, without the consent of the latter.

Office of  
Public  
Works  
(Ireland).

Drainage  
and Im-  
prove-  
ment  
of land  
(Ireland).

The powers conferred on government departments of making Provisional Orders having now been noticed, there remains to be mentioned another example of the disposition of Parliament, not only to make the general law more applicable to the purposes of private bill legislation, but also to extend its operation over the rights of private property, where such rights can be shown to interfere with the public need. For many years it was the Government

County  
Councils,  
&c., em-  
powered  
in certain  
cases to  
make pro-  
visional  
orders.

Departments alone who were entrusted with these powers; but, under the Allotment Acts, 1887 and 1890,<sup>4</sup> which applied to England and Wales, a county council was empowered, in order to facilitate the provision of allotments for the labouring classes, to make Provisional Orders for the compulsory acquisition of land where it could not be obtained by voluntary arrangement with landowners under the permissive enactments for the purpose. The first of these Acts enabled the sanitary authority, upon the representation of six parliamentary electors or ratepayers in an urban district, or in a parish in a rural district, as the case might be, to petition the county authority, and the county authority (subsequently the county council) might, thereupon, make the Provisional Order, with certain exceptions as to residential and railway property. The Act of 1890 provided that duly qualified persons in any district, not being within the limits of a borough, might appeal to the county council to make the Order, in case of a failure of the sanitary authority to take proceedings. The county council, upon the recommendation of a standing committee appointed for the purpose and after a public local inquiry held by some one or more of their own body, or by some other person appointed by

Allot-  
ments.

<sup>1</sup> 26 & 27 Vict. c. 88.

<sup>2</sup> 41 & 42 Vict. c. 59, s. 4.

<sup>3</sup> 43 & 44 Vict. c. 27.

<sup>4</sup> 50 & 51 Vict. c. 48, s. 3; 53 & 54 Vict. c. 65.

them, might make the Provisional Order. The sanitary authority or the county council, in case of appeal, was the promoter of the Provisional Order, and on the Local Government Board devolved the duty of introducing the bill for its confirmation. These Acts have now been repealed with the exception of the powers of making Provisional Orders so far as those powers are applied by any other enactment. The Orders relating to land for allotments are confirmed by the Board of Agriculture and Fisheries without reference to Parliament.<sup>1</sup>

Allotments  
(Scotland).

By the Allotments (Scotland) Act, 1892,<sup>2</sup> the Local Authority of any burgh or county (in burghs the town council or commissioners, in counties the county council) is enabled, under similar conditions, to grant Provisional Orders for the compulsory acquisition of land for allotments. The Secretary for Scotland is directed by the Act to consider objections to the Provisional Order, to order a local inquiry on it if he thinks fit, and is enabled to refuse to introduce the bill for its confirmation.

Dublin  
recon-  
struction.

Under the Dublin Reconstruction (Emergency Provisions) Act, 1916, power is given to the corporation of Dublin to submit to the Local Government Board for Ireland an order for the compulsory purchase or substitution of land in connection with the rebuilding of the city. These orders require confirmation by the Board, but in certain cases of objection do not acquire force of law unless confirmed by Act of Parliament.<sup>3</sup>

Provi-  
sional  
Order  
bills.

The procedure that is followed in Parliament upon Provisional Orders confirmation bills may be shortly stated. It applies to all such bills with the exception of those few cases, already noticed, where it is expressly prescribed that the confirming bill shall proceed as a public bill.<sup>4</sup>

Presenta-  
tion.

Bills for confirming Provisional Orders and certificates are introduced as public bills into either house according to the discretion of the department responsible for them.

First  
reading.

The Lords by a sessional order direct that no Provisional Order

<sup>1</sup> 8 Edw. VII. c. 36, ss. 39, 62, and Sch. 3.

<sup>2</sup> 55 & 56 Vict. c. 54, s. 3.

<sup>3</sup> 6 & 7 Geo. V. c. 66, s. 1 (1) (2), Sch.

<sup>4</sup> In 1898 a bill (to confirm an order of the Lord-Lieutenant of Ireland), which under the Tramways (Ireland) Acts (already mentioned) it was necessary to treat as a public bill, was inadvertently treated on its introduction according to the ordinary procedure on Provisional

Order bills, and referred to the Examiners. On a later day, therefore, this reference to the Examiners was discharged, and the bill proceeded throughout, in accordance with statute, as a purely public bill, 153 C. J. 214-5. 242. 265. 273. Cf. also the proceedings in the Lords on the Tramways (Ireland) Provisional Orders (No. 2) Bill, 299 H. D. 3 s. 383-91.

bill originating in that house shall be read the first time after a fixed day (generally in May), and that no such bill brought from the Commons shall be read a second time after a fixed day (generally in June).<sup>1</sup> In the House of Commons under standing order No. 193A, no bill, originating in that House, for confirming a provisional order or certificate, is to be read the first time after Whitsuntide.

In the Commons the standing orders provide that—

“all bills for confirming provisional orders or certificates shall be set down for consideration, each day, in a separate list, after the private business, and arranged in the same order as that prescribed by the standing orders for private bills” (see p. 210).

Arrange-  
ment of  
provi-  
sional  
order bills  
on notice  
paper.

S.O.(H.C.)  
225A.

In both houses all Provisional Order bills, after the first reading, are referred to the Examiners,<sup>2</sup> before whom compliance has to be proved with standing orders Nos. 38 and 39—under which the promoters of a provisional order must deposit, in both Houses and at the office of the “central authority” (as described in standing order No. 38), a statement relating to the taking of houses inhabited by the working classes; and also in both Houses, duplicates of plans, &c., which have been deposited with a government department. In the case of any Provisional Order bill brought from the other house, in which provisions have been there inserted to which the standing orders of the second house would apply if the bill were a private (local) bill, the Examiners are also directed to inquire and report whether, with respect to these provisions, such standing orders have been complied with.

Reference  
to Exami-  
ners after  
first read-  
ing.

S. O.  
(H.L.) 70A.  
S. O.  
(H. C.) 72.

In the Lords, no Provisional Order bill “shall be read a second time until the Examiner has certified whether the standing orders have or have not been complied with.” Petitions against Provisional Order bills must be presented in the Lords by being deposited in the Private Bill Office before three o'clock on or before the seventh day after the second reading, if the bill has originated in that house; or, in the case of bills brought from the Commons, on or before the seventh day after the first reading.

Further  
proceed-  
ings in the  
Lords.

Second  
reading.  
S. O.

(H. L.) 88.  
Petitions  
against  
S.O.(H.L.)  
92, 93.

By standing order No. 96, every Provisional Order bill which is opposed is to be referred to a select committee of five Lords; and, by standing order No. 102B—

Commit-  
tee and  
subse-  
quent  
stages in  
the Lords.

<sup>1</sup> 137 L. J. 67; &c.

<sup>2</sup> Standing order No. 232 of the House of Commons prescribes the time for depositing memorials complaining of

non-compliance with the standing orders of the house in reference to Provisional Order bills.

S.O.(H.L.)  
96, 102B.



"Every provisional order confirmation bill shall as respects any unopposed orders scheduled thereto, before being committed to a committee of the whole house be referred to the chairman of committees to be dealt with in the same manner as an unopposed local bill."

All Provisional Order bills are then considered in a committee of the whole house and proceed as public bills.

Further  
proceed-  
ings in the  
Commons.

In the Commons as soon as the Examiners report that no standing orders are applicable or that the standing orders applicable to the bill have been complied with—or, in the case of a non-compliance, as soon as the standing orders committee report that the standing orders should be dispensed with—a Provisional Order bill is ordered to be read a second time on the following (or a future) day. After second reading, every bill for confirming provisional orders or certificates stands referred to the committee of selection or to the general committee on railway and canal bills, as the case may require,<sup>1</sup> and is "subject to the standing orders regulating the proceedings on private bills so far as they are applicable."

Second  
reading,  
&c.

S.O.(H.C.)  
208A.

Applica-  
tion of  
private  
bill pro-  
cedure.

S.O.(H.C.)  
151.

The time before which petitions against such bills have to be deposited in the Commons has already been stated (see p. 671). The proceedings of the referees, and the proceedings of committees, on bills for confirming provisional orders or certificates, are conducted "in like manner as in the case of private bills," and are subject to the same rules and orders of the house so far as they may be applicable. Instructions to committees on provisional order bills are governed by the same principles as instructions to committees on private bills<sup>2</sup> (see p. 647).

Commit-  
tee pro-  
cedure.

In a committee on a Provisional Order bill, the parties promoting the order or certificate are first heard, and their evidence thereon is taken; the petitioners against it follow, and they are heard, whether

<sup>1</sup> For cases where, in departure from the ordinary rule of committal, provisional order bills have been specially referred to a joint committee, see p. 443, n. 2, or to a specially constituted committee, see 144 C. J. 268; 148 ib. 313; 168 ib. 174; 169 ib. 247.

<sup>2</sup> As to a proposed mandatory instruction to a committee to strike out one of the Provisional Orders contained in a bill, cf. proceedings in the house on the Water Provisional Orders (No. 2) Bill, 1893, 12 Parl. Deb. 4 s. 1230, and the Pier and Harbour Provisional Orders (No. 2) Bill, 1904, 136 ib. 109. As to an

instruction to the committee on a re-committed bill to reinstate an order which had been reported, "Parties do not proceed," see p. 725, and 168 C. J. 305, 337, 354. For other instructions, given or proposed, to committees on Provisional Order bills, cf. *inter alia* Water Provisional Orders (No. 2) Bill, 1893, 148 C. J. 359; Local Government (Ireland) Provisional Order (No. 1) Bill, 1896, 39 Parl. Deb. 4 s. 941-2; Local Government Provisional Orders (No. 14) Bill, 1899, 154 C. J. 284, 73 Parl. Deb. 4 s. 414-431.



they oppose the order or certificate as a whole, or only on particular articles or clauses, and the promoters' counsel replies or not, according as the petitioners have or have not called evidence. On the conclusion of the case, the question is put to the committee, "That this order (or certificate) be confirmed," or "as amended be confirmed," which is resolved in the affirmative or negative, as the case may be; and the chairman, the preamble having been agreed to, reports the bill with the decision of the committee on the Provisional Orders both opposed and unopposed.

Standing order No. 208A provides that when any order or certificate contained in any such bill is opposed, the committee to whom it is referred shall consider all the orders and certificates comprised in the bill, "and may, if they think fit, divide the bill into two bills, dealing with the opposed and unopposed orders or certificates respectively, and report the same separately."<sup>1</sup> S.O.(H.C.)  
208A.

If all the orders or certificates comprised in a confirming bill are unopposed, the bill is treated by the committee of selection or the general committee on railway and canal bills, as the case may require, as an unopposed private bill.

Some difficulties are experienced by committees on Provisional Order bills where it becomes necessary to amend the order. If the provision inserted by way of amendment comes within the powers conferred by statute on the authority which grants the Provisional Order, it is inserted by the committee in the text of the order, while, on the other hand, if the amendment be of such a nature that it is in excess of the powers so conferred, it is inserted in the confirming bill.<sup>2</sup> New matter should not be introduced which would be inconsistent with the public notice and advertisement of the purpose of the order, required by the Act under which the Provisional Order is granted.<sup>3</sup>

<sup>1</sup> In session 1909, the Committee of Selection was instructed to refer one of the orders contained in a bill to the Local Legislation Committee, 164 C. J. 162.

<sup>2</sup> This practice has been followed in deference to the wishes of the Local Government Board, who object, on the question of precedent, that an order emanating from them should contain provisions which they were not authorized by the enabling Act to have inserted in the order. It has been suggested that all amendments should be inserted in the order, and some method be adopted of distinguishing those made by the autho-

city of Parliament.

<sup>3</sup> In 1901 the committee on the Local Government Provisional Orders (No. 7) Bill (which comprised orders relating respectively to South Shields and to other places), inserted provisions affecting the boundary of the borough of South Shields, and stated their reasons for doing so in their report on the bill. The bill was thereupon referred to the Examiners with respect to compliance with the standing orders. The Examiners made a special report, stating that, if it was intended that the bill should be treated as a private bill, the standing

Report  
and sub-  
sequent  
stages in  
the Com-  
mons.

On being reported, a Provisional Order bill is ordered to be considered, as amended—or, if not amended, to be read the third time—on the following (or a future) day.

orders had not been complied with, inasmuch as no notice had been given of the powers sought in clause 2 as amended by the committee, but that the standing orders did not contemplate the examination of confirmation bills except in regard to the standing orders with which compliance is required in the case of such bills and with which compliance had in this case been already proved. The

standing orders committee, to whom this report was referred, reported that no standing orders not previously inquired into were applicable. On consideration of the bill as amended, clause 2, by which the South Shields boundary was altered, was omitted; 156 C. J. 296. 302. 307. 318. 323, and Minutes of Evidence, Group N, June 19-28 and July 2, 1901.

## CHAPTER XXXII.

## PRIVATE LEGISLATION PROCEDURE (SCOTLAND).

THE Private Legislation Procedure (Scotland) Act, 1899 (62 & 63 Vict. c. 47), provides the machinery and prescribes the method by which parties must now proceed when they desire "to obtain parliamentary powers in regard to any matter affecting public or private interests in Scotland for which they are entitled to apply by a petition for leave to bring in a private bill." Under the system so set up, instead of presenting a petition for a private bill, "they shall proceed"—to quote the directions of the Act—"by presenting a petition to the Secretary for Scotland, praying him to issue a Provisional Order in accordance with the terms of a draft Order submitted to him or with such modifications as shall be necessary."<sup>1</sup>

Private legislation, in the case of Scotland, not carried on by private bills, but by provisional orders under the Act 62 & 63 Vict. c. 47.

The Act does not affect the powers which at the time of its passing were already possessed by the Secretary for Scotland of making Provisional Orders under the provisions of statutes then in force. Nor does it affect the procedure specified in such statutes, except that, where the orders issued under their provisions require parliamentary confirmation, the confirming bill in its passage through Parliament shall follow the special procedure (see p. 799) which is laid down in Section 9 of the Private Legislation Procedure (Scotland) Act.<sup>2</sup> The special procedure, throughout, upon Orders under the Private Legislation Procedure (Scotland) Act, and upon the bills for their confirmation, is materially different, in most respects, from the procedure upon the ordinary Provisional Orders and Provisional Order bills described in the last chapter. The objects, moreover, that can be obtained through an ordinary Provisional Order are confined, by the particular enabling Act under which it is granted, within very specifically defined limits; but the objects to be obtained

Scope of Act.

<sup>1</sup> Sec. 1 (1); and cf. Report and Minutes of Evidence of the Select Committee on the Private Legislation Procedure (Wales) Bill, Parl. Pap. (H. C.), sess. 1904, No. 243, Q. 1165. As to county or town

Councils, promoting or opposing Orders, &c., under the Act, see sec. 11, and 3 Edw. VII. c. 9, s. 2.

<sup>2</sup> Sec. 16. And cf. Constable, pp. 22.

## 792 PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899.

through an order under the Act of 1899 comprise almost every matter in Scotland in regard to which parties "are entitled to" seek parliamentary powers by the means of a private bill—the only objects that are expressly excepted being specified in sec. 16 of the Act, which provides that the Act "shall not apply to Estate bills," and shall not "affect the right of any person to apply for or the power of the Board of Trade or other department to make provisional or other orders under the provisions of any Act in force at the passing of this Act or the procedure therein specified, or confer upon the Secretary for Scotland power to make Provisional Orders authorizing and regulating the supply of Electricity for lighting and other purposes."

The  
"General  
Orders."

The provisions of the Act are supplemented, and the proceedings under it regulated in detail, by a number of "General Orders" made (in accordance with its provisions) by the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons, acting jointly with the Secretary for Scotland, and laid before Parliament.<sup>1</sup> The main aim of the Act being to provide a special machinery and procedure, in the promotion of undertakings in Scotland, in place of the proceedings upon a private bill in its preliminary and committee stages, these general orders will be found to correspond very largely to the standing orders of both houses by which those stages are governed. The provisional orders to be applied for under the Act are divided, according to the subjects to which they relate, into the same two classes as private bills: <sup>2</sup> the notices, deposits, and other preliminary requirements are, generally speaking, the same; <sup>3</sup> and, in practice, the parliamentary examiners appointed under standing orders act as the examiners assigned for the purposes of the Act.<sup>4</sup> Provision is also made for the incorporation, in any provisional order under the Act, of those general Acts or clauses which would be incorporated in it if it were a private bill.<sup>5</sup>

Applica-  
tion for a  
provisional  
order.

Petitions for the issue of a Provisional Order must be deposited at the office of the Secretary for Scotland, together with a draft of the proposed order, on or before the 17th December, or on or before

<sup>1</sup> Sec. 15. 18.

<sup>2</sup> G. O. 1.

<sup>3</sup> G. O. 3-75. By G. O. 144 and 145, the provisions both of the Parliamentary Documents Deposit Act, 1837, as to documents deposited under the standing orders, and, *mutatis mutandis*, of the Parliamentary Deposits Act, 1846, as to

money deposits in the case of private bills, are made applicable to the documents similarly deposited and to the money deposits similarly required under the general orders, see p. 615, notes 3 and 4.

<sup>4</sup> Sec. 13; G. O. 2.

<sup>5</sup> Sec. 15 (2); G. O. 143.

the 17th April—two opportunities being thus given in each year of applying for parliamentary powers under the Act in place of the one opportunity that is open to the promoters of a private bill. A copy of the draft order must also be deposited with the Clerk of the Parliaments, the Committee, and Private Bill Office of the House of Commons, and various public offices.<sup>2</sup>

Petitions against a proposed Provisional Order must be deposited not later than six weeks after the order is applied for.<sup>3</sup>

Petitions  
against.

The extent of opposition offered to the proposed provisional orders having thus been indicated, the draft orders applied for are taken into consideration, and are reported upon, by the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons,<sup>4</sup> who are expressly empowered by the Act to determine all matters of practice and procedure necessary for this purpose,<sup>5</sup> and who throughout are referred to as "the Chairmen." The Chairmen's report upon each of the draft orders is made to the Secretary for Scotland, and a copy is laid before Parliament.<sup>6</sup> If it appears from their report that either of the Chairmen is of opinion that the provisions or some provisions of a draft order "do not relate wholly or mainly to Scotland,<sup>7</sup> or are of such a character or magnitude,<sup>8</sup> or raise any such question of policy or principle,<sup>9</sup> that they ought to be dealt with by private bill and not by provisional order,"<sup>10</sup> the Secretary for Scotland must refuse to

Report  
by the  
Chairmen  
(Lords and  
Com-  
mons).

<sup>1</sup> G. O. 2h.

<sup>2</sup> Sec. 1 (2); G. O. 32. 33.

<sup>3</sup> G. O. 77. 79. In the case of any dissentient at the Wharnccliffe meeting held under G. O. 62-66, who would otherwise be precluded from presenting a petition in time, the time is extended. Provision is also made (in G. O. 79), to meet the case of petitioners complaining of matters arising subsequently during an inquiry held under the Act.

<sup>4</sup> The Act provides that, "with a view to such report," the Secretary for Scotland shall forthwith inform the Chairmen of any objections, &c., that have been duly made to the provisions of an Order, sec. 2 (1).

<sup>5</sup> Sec. 2 (1) (2); Parl. Pap. (H. C.) sess. 1904, No. 243, Qs. 1075. 1094.

<sup>6</sup> Sec. 2 (2) (3); S. O. 252 (H. C.), 184 (H. L.).

<sup>7</sup> *E.g.* Chairmen's Report of 17th Feb., 1903.

<sup>8</sup> *E.g.* Chairmen's Reports of 2nd Feb., 1901, and 14th Feb., 1905; &c.

<sup>9</sup> *E.g.* Chairmen's Report of 2nd Feb., 1901. In addition to the general grounds, indicated by the Act, upon which they determine how to deal with each application, the Chairmen, "having regard to s. 16 (2)," which concerns schemes for authorizing and regulating the supply of electricity, have generally directed any electric power schemes, for which parliamentary powers have been sought under the Act, to proceed as private bills, Parl. Pap. (H. C.) sess. 1904, No. 243, Q. 436; Chairmen's Report of 17th Feb., 1903, &c. Cf. also Off. J. 1900-1, p. 46; P. L. R. i. 30, 31.

<sup>10</sup> In 1908 the Chairmen reported that the Post Office Site (Glasgow) Order ought to be introduced as a public bill, Off. J. 1907-8, p. 19, cf. Post Office Sites Act, 1908, 8 Edw. VII. c. clxi.

Substi-  
tuted bills.

issue the provisional order (or the portion of it) which is thus objected to. In this event, however, it is open to the promoters to proceed by way of a private bill—described as a “substituted bill”—for those powers which by the Chairmen’s objection they are debarred from seeking through their proposed provisional order.<sup>1</sup> The promoters are required to communicate their intentions within a prescribed time to all opponents and must satisfy the examiners that they have duly done so.<sup>2</sup> If they decide to proceed with a substituted bill, they must deposit copies of the bill in every public office where they had previously been obliged to deposit copies of their proposed provisional order.<sup>3</sup> They must also satisfy the examiner that the bill so deposited does not contain any provisions not contained in the order for which it is substituted; <sup>4</sup> and they must give any additional notices that may be required in connection with it under the standing orders.<sup>5</sup> Subject to these conditions, however, the notices and deposits for the proposed order are held to have been served and made for the substituted bill, compliance or non-compliance with the preliminary general orders being regarded as equivalent to compliance or non-compliance with the corresponding standing orders: <sup>6</sup> the petition for the proposed provisional order is taken as the petition for the substituted bill; and the petitions deposited against, or in favour of, the draft order, are transmitted from the Secretary for Scotland’s office, and are received by both houses as petitions against, or in favour of, the substituted bill.<sup>7</sup> The Chairmen determine, as in the case of ordinary private bills, in which house the substituted bill shall originate; <sup>8</sup> and its subsequent course is identical with that of a private bill. Where the order, for the whole or a part of which a bill is substituted, is one of those applied for on or before the 17th April, it is competent for the promoters to deposit their substituted bill on or before the ensuing 17th December; <sup>9</sup> but in most of such cases the substituted bill has

<sup>1</sup> Sec. 2 (4); S. O. 250 (H. C.), 182 (H. L.). In the case where the Chairmen have reported that part, only, of a provisional order applied for should proceed as such, promoters can proceed with that part accordingly and embody the rest of their original scheme in a private bill. In some instances they have not elected to promote a bill in substitution for the part of their proposed order to which the Chairmen have objected, *Off. J.* 1902-3, p. 28,

and 1903-4, p. 24.

<sup>2</sup> Sec. 2 (4); G. O. 77; S. O. 256 (H. C.), 188 (H. L.).

<sup>3</sup> S. O. 255 (H. C.), 187 (H. L.).

<sup>4</sup> S. O. 257 (H. C.), 189 (H. L.).

<sup>5</sup> Sec. 2 (4).

<sup>6</sup> S. O. 256 (H. C.), 188 (H. L.).

<sup>7</sup> S. O. 259 (H. C.), 189A (H. L.).

<sup>8</sup> 158 C. J. 16; 159 *ib.* 31; &c.

<sup>9</sup> S. O. 255 (H. C.), 187 (H. L.). And cf. the proceedings on the *Hutcheson’s Hospital & Hutcheson’s Educational*

been introduced and passed (either with or without a suspension of the standing orders), before the ordinary time of prorogation.<sup>1</sup>

Every draft order as originally applied for is referred by the Secretary for Scotland to the Examiners, one or other of whom reports to him and to the Chairmen, whether the "preliminary" general orders have or have not been complied with. In the case of a non-compliance the Examiner also reports to the two Chairmen the grounds for his decision; <sup>Proceedings before Examiner on proposed provisional order.</sup> and, within a prescribed time, it is competent for the promoters to apply by memorial to the Chairmen praying them to dispense with any general order with which they have failed to comply. The Chairmen's decision (as to granting or refusing the dispensation prayed for) is final; and if, in granting a dispensation, they attach any conditions to it, the draft order cannot be proceeded with until the Examiner has reported that these conditions have been satisfied.<sup>3</sup>

When the Chairmen have reported that a proposed provisional order may proceed, and there has been a due compliance with the general orders, the Secretary for Scotland takes the application for the order into consideration.<sup>4</sup> <sup>Issue of provisional order.</sup>

In all cases where there is opposition <sup>Proceedings on orders on which an inquiry is held.</sup>—and in any case in which, even though there be no opposition, he considers that inquiry is necessary—the Secretary for Scotland directs an inquiry (as to the propriety of making and issuing the provisional order applied for) to be held by commissioners sitting in Scotland.<sup>6</sup>

The commissioners appointed on these inquiries are drawn from three panels formed under the Act. Two of these are "parliamentary" panels, and consist of not more than fifteen members from <sup>Appointment of commissioners for inquiry.</sup>

Trust Bill (in substitution for a provisional order applied for on or before the 17th April, 1903), 135 L. J. 157; 136 ib. 18. 21; Off. J. 1903-4, p. 24.

<sup>1</sup> *E.g.* Loch, Leven Water Power Bill, 1901, 156 L. J. 201, 206, 334, 420; Scottish Ontario &c. Company Bill, 1903, 158 ib. 208, 291, 376, 412; &c.

<sup>2</sup> G. O. 73.

<sup>3</sup> Sec. 3 (2); G. O. 74; and see S. O. 252 (H. C.), 184 (H. L.); 157 C. J. 126; &c.

<sup>4</sup> Sec. 3 (1).

<sup>5</sup> No provisional order is considered as opposed unless the petitions against it (see p. 793) have been properly deposited, G. O. 77.

<sup>6</sup> Sec. 3 (1). In 1901 an inquiry

was directed to be held on the Arizona Copper Company, Ltd., provisional order, although (no petition having been duly presented against it) it was not an opposed order, Off. J. 1900-1, pp. 3, 12, 38; Parl. Pap. (H. C.) sess. 1904, No. 243, Q. 126. The inquiry on two opposed provisional orders in 1902 was deferred and was not directed to be held until 1904, Off. J. 1901-2, pp. 25, 89; 109 Parl. Deb. 4 s. 1179-85; P. L. R. ii. 48, and iv. 29, 61. The time and place of each inquiry are fixed by the commissioners appointed to hold it, due notice being given to the parties concerned, s. 6 (1); G. O. 76; and cf. Parl. Pap. (H. C.) sess. 1904, No. 243, Qs. 961, 2638-9.



each house, who, in both houses, are selected and proposed by the committees of selection.<sup>1</sup> The third or "extra-parliamentary" panel is nominated every five years by the Chairmen and the Secretary for Scotland, and consists of twenty "persons qualified by experience of affairs to act as commissioners;" and any casual vacancy occurring in this extra-parliamentary panel is filled up by the Chairmen acting jointly with the Secretary for Scotland.<sup>2</sup> When an inquiry is directed to be held on a proposed order or group of orders, the Chairmen of both houses constitute a commission for the purpose by selecting four members from the two parliamentary panels, taking two members, when it is found feasible to do so, from the panel of each house, and nominating one of the four as chairman of the commissioners.<sup>3</sup> If the Chairmen of both houses are unable to appoint all the commissioners for an inquiry from the two parliamentary panels, recourse is then had to the third or extra-parliamentary panel, the Secretary for Scotland taking from it sufficient members to make up the required number of commissioners.<sup>4</sup> In the event of a casual vacancy in the chairmanship or among the members of a commission, the Secretary for Scotland is empowered to fill it up from any of the three panels.<sup>5</sup>

Proceedings before commission on inquiry.

The proceedings before a commission are largely a counterpart of those before a private bill committee in either House of Parliament. The commissioners are similarly restricted from inquiring into matters to be proved before the examiner,<sup>6</sup> and are required to sign similar declarations before proceeding to business.<sup>7</sup> The manner in which particular classes of undertakings or proposals are to be dealt with and reported upon is similarly conditioned and prescribed;<sup>8</sup> and the rules as to the attendance, voting, and adjournment of the commissioners,<sup>9</sup> as to the admission of affidavits and proof of consents,<sup>10</sup> and as to the "filled up" and the signed copy of the order, &c.,<sup>11</sup> are the same *mutatis mutandis* as with a private bill

<sup>1</sup> Sec. 5 (2); S. O. 253 (H. C.), 185 (H. L.).

<sup>2</sup> Sec. 4, and cf. Off. J. 1904-5, p. 29.

<sup>3</sup> Sec. 5 (1) (3). If need be, three or all of the commissioners may be members of the same parliamentary panel, s. 5 (4). Cf. commission on Group B, 1902.

<sup>4</sup> Sec. 5 (5). Cf. commissions on Group B, 1903; Groups A and B, 1904; Group B, 1905; &c.

<sup>5</sup> Sec. 5 (6), and cf. Off. J. 1913-14,

p. 27. The occurrence of a dissolution of Parliament does not debar any member of the parliamentary panels from continuing to act in an inquiry on which he has already been appointed as a commissioner, s. 5 (7).

<sup>6</sup> G. O. 88.

<sup>7</sup> Sec. 5 (8); G. O. 80.

<sup>8</sup> G. O. 99-141.

<sup>9</sup> Sec. 10 (5) (6); G. O. 81-85. 87.

<sup>10</sup> G. O. 89-91.

<sup>11</sup> G. O. 86. 92. 96.



committee. The evidence taken before parliamentary committees is occasionally referred by one or other house to a commission;<sup>1</sup> and any recommendations made by the Chairmen of both houses, or by any public department, with regard to a proposed order, are always referred to the commissioners and must be mentioned in their report.<sup>2</sup> The commissioners must also report in every case whether they have inquired into the allegations of the provisional order referred to them, and whether they have or have not agreed to the preamble or gone through the clauses.<sup>3</sup> In addition, the commissioners are empowered to enforce the attendance of witnesses and the production of papers.<sup>4</sup> Any person who has petitioned in the prescribed manner is entitled to appear in opposition to an order;<sup>5</sup> but the commissioners, whose decision on any question of *locus standi* is final, may not allow a *locus* to any person who is not thus entitled to be heard, except upon special grounds and subject, at the commissioners' discretion, to the payment of costs or to other conditions.<sup>6</sup>

On finishing their inquiry the commission report to the Secretary for Scotland,<sup>7</sup> recommending (a) that the order should be issued as prayed for, or (b) that it should be issued with modifications,<sup>8</sup> or (c) that it should be refused.<sup>9</sup> If they report that the order should not be made the Secretary for Scotland must refuse to issue it; otherwise he makes the order as prayed for, or with whatever modification may appear to be necessary having regard to the recommendations of the commissioners, of the two Chairmen, and of the Treasury and other public departments.<sup>10</sup>

If there is no opposition to a proposed order (or opposition has been formally withdrawn before an inquiry has been held<sup>11</sup>), and if the Secretary for Scotland does not consider an inquiry necessary, he makes the order as prayed for, or "with such modifications as shall appear to be necessary having regard to" recommendations from the Chairmen and from public departments. But in dealing

Report of  
commissioners.

Proceedings on  
order on  
which no  
inquiry is  
held.

<sup>1</sup> 134 L. J. 300; 135 ib. 81; 136 ib. 120; 156 C. J. 151; 157 ib. 373; 159 ib. 144.

<sup>2</sup> Sec. 6 (4); G. O. 95; cf. also sec. 11 (3), and sec. 17.

<sup>3</sup> G. O. 93. 94.

<sup>4</sup> Sec. 10; G. O. 79A.

<sup>5</sup> Sec. 6 (3); G. O. 78. 79.

<sup>6</sup> Sec. 6 (2); G. O. 94; Off. J. 1900-1, p. 45. The Act does not confer upon the commissioners the more extended power of awarding costs possessed

by parliamentary committees (see p. 726). Cf. P. L. R. i. 60. 61; Parl. Pap. (H. C.) sess. 1904, No. 243, Q. 333.

<sup>7</sup> Sec. 5 (5).

<sup>8</sup> When the commission report that an order should be issued with modifications—the most common case—they are to submit a copy of the order showing the modifications they recommend.

<sup>9</sup> Off. J. 1903-4, p. 42.

<sup>10</sup> Sec. 8 (1).

<sup>11</sup> G. O. 146; Off. J. 1900-1, p. 76.

with a draft order on which no inquiry is held, he is to "have regard to" the instructions which the general orders give to a commission in the case of an inquiry; and the promoters, on due notice being given them, must appear before him or his representative to give whatever proofs, and to produce whatever evidence or documents, may be required in regard to their proposed order.<sup>1</sup>

Procedure  
on pro-  
visional  
orders  
when  
modified.

Wherever any modifications are made in any draft order as originally applied for,<sup>2</sup> the order is referred again, in its modified form, to the examiners in precisely the same manner as the original draft order.<sup>3</sup> And before finally making and issuing an order as modified, the Secretary for Scotland must cause copies of it to be deposited, for not less than fourteen days, in the office of the Clerk of the Parliaments and the Committee and Private Bill Office of the House of Commons, at the Treasury, and at all the offices where the draft order was originally deposited, and must again have regard to any recommendations that may be made by the Chairmen and the public departments.<sup>4</sup>

Procedure  
upon bills  
to confirm  
orders.

The confirming bill, requisite to give validity to any provisional order under the Act, is introduced into Parliament as soon as practicable after the order is made and issued,<sup>5</sup> notice being given as in the case of other provisional order bills. The Act creates a cardinal distinction, in respect of their passage through Parliament, between bills for the confirmation of those orders (whether opposed or unopposed) upon which an inquiry by commissioners has been held, and bills to confirm those unopposed orders upon which no inquiry has been held.<sup>6</sup> The bills to confirm orders upon which no inquiry has been held<sup>7</sup> proceed under section 7 of the Act. The bills to confirm orders upon which an inquiry has been held<sup>8</sup> proceed under section 9.

<sup>1</sup> Sec. 7; G. O. 75A. 142.

<sup>2</sup> Secs. 1. 7. 8 (1); G. O. 98. &c.

<sup>3</sup> G. O. 74. The Examiners then report "No further General Orders applicable," or "Further General Orders complied with" or "not complied with," as the case may be. Cf. Off. J. 1904-5, pp. 37. 65, &c.

<sup>4</sup> Secs. 7. 8 (1); G. O. 98.

<sup>5</sup> Secs. 7. 8 (3); and cf. Off. J. 1904-5, p. 88. The Secretary for Scotland determines in which house it shall originate, see Parl. Pap. (H. C.) sess. 1904, No. 243, Q. 154.

<sup>6</sup> Secs. 7. 8 (1). 9.

<sup>7</sup> Under this description is included any bill to confirm an order which has been referred to and reported from a commission, but with regard to which (owing to the non-appearance of opponents or to other causes) the commissioners have reported that they have not inquired into its allegations. In such a case the bill, being one to confirm an order upon which no inquiry has been held, proceeds under sec. 7 of the Act. (Glasgow Corporation (Tramways and General) Order Confirmation Bill, 1901, 156 C. J. 343.

<sup>8</sup> Sec. 8 (1).

A bill introduced to confirm any order upon which no inquiry has been held is deemed to have passed all the stages up to and including committee.<sup>1</sup> Consequently, in the house in which the bill originates the order for its consideration is made immediately upon its introduction, and after it has been considered and read the third time there it is sent to the second house in the ordinary way.<sup>2</sup> In the second house a precisely similar course is followed. The order for the consideration stage is made immediately on the bill being brought from the first house, and the subsequent proceedings are the same as upon any ordinary public or provisional order bill.<sup>3</sup>

The procedure in the case of a bill to confirm any order upon which an inquiry has been held is prescribed by section 9 of the Act.<sup>4</sup> A bill of this description, on being first introduced, is read the first time in the house in which it originates, in the ordinary way; but immediately after the first introduction of every bill for confirming an order upon which there has been an inquiry, an opportunity is given for the presentation of a hostile petition which may lead to a further inquiry being held by a parliamentary committee. If no such petition is then presented, no opportunity is subsequently given during the passage of the bill through Parliament of referring it to a committee.

The Act provides that if, before the expiration of seven days after the introduction of such a bill in the house in which it originates, a petition be presented against any order comprised in the bill,<sup>5</sup> any member may then give notice of a motion to refer the bill to a joint committee of both houses.<sup>6</sup> In those cases, therefore, where a

<sup>1</sup> Sec. 7 (2).

<sup>2</sup> 158 C. J. 376, 380, 386; &c.

<sup>3</sup> 156 C. J. 328, 334, 339; &c.

<sup>4</sup> By sec. 16 (1) of the Act, the procedure prescribed in sec. 9 is also made applicable, "with the necessary modifications," to bills for the confirmation of orders made by the Secretary for Scotland under the Acts passed prior to 1890. These bills have proceeded under sec. 9 of the Act except that they have been referred after first reading to the Examiners, Paisley Gas, &c., Provisional Order Bill, 1906, 161 C. J. 331; Ladybank Sewerage, Drainage and Water Provisional Order Bill, 1907, 162 ib. 222; Oyster and Mussel Fishery (Bay of Firth) Order Confirmation Bill, 1908,

3 ib. 215; Kilmarnock Gas Provisional Order Bill, 1912, 167 ib. 128; Kilmarnock Gas Order Confirmation Bill (Lords), 1915, 170 C. J. 160.

<sup>5</sup> In practice it has not been usual to include in a confirmation bill more than one order issued under the Act.

<sup>6</sup> The time at which such a motion may be made is immediately after the bill is read a second time in the house in which it originated, North British Railway Order Confirmation Bill, 163 C. J. 467. In the House of Commons the motion for a joint committee if opposed is postponed, under standing order 207, until a later day, 156 C. J. 225, 231 (Arizona, &c., Bill); 159 ib. 224, 240 (Leith, &c., Bill).

hostile petition is thus presented, it rests with the house in which the confirming bill originates to determine whether a further inquiry by a parliamentary committee shall or shall not be granted. If a motion for a joint committee is made and carried in that house, "the bill shall stand referred to a joint committee of both Houses of Parliament; and the opponent shall, subject to the practice of Parliament, be allowed to appear and oppose by himself, his counsel, agents, and witnesses; and counsel, agents, and witnesses may be heard in support of the order."<sup>1</sup>

Constitution and procedure of joint committee.

The joint committee so appointed is to consist of six members, three from each house, the House of Commons' members being nominated by the committee of selection.<sup>2</sup> The committee hear and determine any question of *locus standi*; <sup>3</sup> and they may by a majority award costs, the taxation and recovery of which are to be secured in the manner prescribed by the Parliamentary Costs Act, 1865 (see p. 726).<sup>4</sup>

Subsequent procedure on bill in first house.

The report of the joint committee when made is laid before both Houses of Parliament.<sup>5</sup> If the committee report that the order ought to be confirmed, the bill, if amended, is ordered for consideration—or, if not amended, for third reading—and is sent in due course to the second house.

Procedure in first house on bills when no joint committee is appointed.

If no hostile petition is presented—or if a petition be presented but a motion for a joint committee is either not made or not carried<sup>6</sup>—the confirming bill in the house in which it originates is deemed to have passed the stage of committee. The order for its consideration there is made immediately after its second reading (or after any unsuccessful motion for a joint committee), and after being considered and read the third time the bill is sent to the second house.<sup>7</sup>

Procedure in second house upon bills to confirm order on which an

The procedure in the second house upon a bill to confirm any order upon which an inquiry has been held may be very shortly stated. After being brought from the house in which it originates, it is read the first time and second time.<sup>8</sup> Between these two stages

<sup>1</sup> Sec. 9 (1). Leith Corporation Tramways Order Confirmation Bill, 159 C. J. 240. 246.

<sup>2</sup> S. O. 254A (H. C.), 186A (H. L.).

<sup>3</sup> Sec. 9 (1); P. L. R. iv. 15.

<sup>4</sup> Sec. 9 (3). Cf. Constable, pp. 94-5.

<sup>5</sup> Sec. 9 (2); 159 C. J. 290, 136 L. J. 239.

<sup>6</sup> 156 C. J. 231; 133 L. J. 249.

<sup>7</sup> Sec. 9 (4); 156 C. J. 222. 225. 231; &c.

<sup>8</sup> The Edinburgh and District Water Order Confirmation Bill was brought from the Lords on the 7th August, 1914, and passed through all its stages in the House of Commons on the same day, 160 C. J. 430, 65 H. C. Deb. 5 s. 2146.

no such length of time need intervene as is necessary in the first house, as it is not competent for parties to present a petition against an order when the confirming bill reaches the second house, nor, consequently, for a member to move that it should be referred to a joint committee.<sup>1</sup> In the second house the stage of committee is deemed to have been passed in the case of every bill confirming any order on which an inquiry has been held.<sup>2</sup>

If in the first house no motion for a joint committee has been carried, the bill in the second house, after being read a second time, is ordered in the Commons to be considered as if reported by a committee, and proceeds to its third reading in the ordinary manner.<sup>3</sup> In the House of Lords, when the bill has been read a second time, a day is appointed for its third reading.

If, on a motion made and carried in the first house, the bill has been referred to a joint committee, it is deemed, when in the second house, to have passed the stage of committee; and is ordered to be read the third time.<sup>4</sup>

It may be noted that where a bill, for the confirmation of an order upon which there has been an inquiry, originates in the Lords and is there referred to a joint committee, no opportunity is provided for amending it (except verbally) during its subsequent passage through the Commons, as, in that house, pursuant to standing order (Public Business), No. 42, no amendments, not being merely verbal, may be made, as in the Lords, to a bill on its third reading (see p. 384).

<sup>1</sup> Sec. 9 (1); 94 Parl. Deb. 4 s. 536; 21 H. L. Deb. 5 s. 512.

<sup>2</sup> Sec. 9; a *Ad. Note* by Mr. Speaker, 10th August, 1904.

<sup>3</sup> Sec. 9; and cf. 157 C. J. 340, 341, 363, 369, 378 (Aberdeen &c., Bill); &c. The

stages of consideration and third reading have been taken on the same day, Sidlaw Sanatorium (Transfer) Order Confirmation Bill, 165 ib. 275.

<sup>4</sup> S. O. 254 (H. C.), 186 (H. L.).

## CHAPTER XXXIII.

## LOCAL AND PERSONAL, AND PRIVATE, ACTS OF PARLIAMENT.

Private bills, when passed, divided into three classes of Acts.

AFTER they have received the royal assent (see p. 394), private bills are divided into three classes of Acts : (1) Local and personal, declared public ; (2) Private, printed by the King's printers ; and (3) Private, not printed.

Local and personal Acts.

With the exception of any Inclosure, or Inclosure and Drainage Acts, all the bills which by standing order No. 1 (of both houses) are divided into the two classes so frequently referred to, are included, when passed, in the category of local and personal Acts. Until 1798 such Acts were printed with the other statutes of the year,<sup>1</sup> and were not distinguishable from public Acts except by the character of their enactments ; but since 1798 they have been distinguished and printed in the separate collection known as " Local and Personal Acts." Since 1868, as already mentioned (see p. 607), a considerable class of Acts, previously included in the collection of public general Acts, have also been printed among the local and personal Acts.<sup>2</sup> They are Acts which, though passed as public bills, are local in their character, and Acts for the confirmation of Provisional Orders and of Orders under the Private Legislation Procedure (Scotland) Act.<sup>3</sup>

Declared to be public Acts.

Every local and personal Act passed before the year 1851 contained a clause declaring that it " shall be a public Act, and shall be judicially taken notice of as such." <sup>4</sup> But by Lord Brougham's Act of 1850,

<sup>1</sup> They are eliminated from the revised editions of the statutes periodically issued by the Statute Law Revision Committee.

<sup>2</sup> This change was introduced with a view to reduce the inconvenient bulk of the annual volume of the Public General Acts, and has been carried out as far as circumstances admit.

<sup>3</sup> These Acts are specially distinguished both in the volumes of the Local and Personal Acts among which they are included, and also in the Table of Local Acts appended to the annual volume of Public General Acts.

<sup>4</sup> The practice of declaring particular

Acts of a private nature to be " public Acts " commenced in the reign of William and Mary, and was soon extended to nearly all private Acts, by which felonies were created, penalties inflicted, or tolls imposed (cf. Spiller's Index to the Statutes). In one or two special cases, occurring between 1798 and 1851, local and personal Acts, which were of an unusually public character, not only contained the ordinary " public " clause, but were printed among the public general Acts (Manchester Stipendiary Magistrates Acts, 53 Geo. III. c. 72 ; 7 & 8 Vict. c. 36 ; and Manchester Warehousing Act, 7 & 8 Vict. c. 31).

for shortening the language of Acts of Parliament, the insertion of this "public" or "evidence" clause in every local and personal Act was rendered unnecessary by a general enactment, which is now contained in the Interpretation Act, 1889,<sup>1</sup> and which declares that every Act, unless it contains an express provision to the contrary, shall be a public Act and shall be judicially taken notice of as such.

From 1798 to 1815 the private Acts, not declared public, were not printed by the King's printers, and could only be given in evidence by obtaining authenticated copies from the statute rolls in the Parliament Office. But since 1815, the greater part of such private Acts have been printed by the King's printers, and have contained a clause declaring that a copy so printed "shall be admitted as evidence thereof by all judges, justices, and others;" and, since 1851 this "evidence clause" has been retained, with the addition of an enactment that the "Act shall not be deemed a public Act." These Acts consist almost exclusively of Estate Acts and of any Inclosure, or Inclosure and Drainage, Acts.<sup>2</sup>

The last class of Acts are those which still remain unprinted: they consist of name, naturalization, divorce, and other strictly personal Acts.<sup>3</sup>

<sup>1</sup> Lord Brougham's Act (13 & 14 Vict. c. 21) was repealed and re-enacted in the Interpretation Act, 1889 (52 & 53 Vict. c. 63, ss. 9, 41. and sch.).

<sup>2</sup> A list of these "private Acts, printed by the King's printers, and whereof the printed copies may be given in evidence," appears in the "Table of the Titles of the Local and

Private Acts passed during the Session," which is appended to the annual volume of the Public General Acts. Cf., e.g., the volume of 1899 (62 & 63 Vict.), p. 231.

<sup>3</sup> A list of these "private Acts, not printed" appears in the table mentioned in the preceding note. Cf., e.g., the volume of Public General Acts of 1899 (62 & 63 Vict.), p. 232.

Private  
Acts,  
printed.

Private  
Acts, not  
printed.

## CHAPTER XXXIV.

## FEES PAYABLE BY THE PARTIES PROMOTING OR OPPOSING PRIVATE BILLS. TAXATION OF COSTS OF PARLIAMENTARY AGENTS, SOLICITORS, AND OTHERS.

Fees payable on private bills.

THE fees which are chargeable upon the various stages of private bills, and are payable by the several parties promoting or opposing such bills, are specified in both houses in the standing orders.

It is declared by the Commons, "That every bill for the particular interest or benefit of any person or persons, whether the same be brought in upon petition or motion, or report from a committee, or brought from the Lords, hath been and ought to be deemed a private bill, within the meaning of the table of fees;" and that "the fees shall be charged, paid, and received at such times, in such manner, and under such regulations as the Speaker shall from time to time direct."<sup>1</sup>

In the Commons, only half of the fees for proceedings in the house are charged on estate, divorce, naturalization, and name bills. No fees on an indemnity or restoration bill are charged in the House of Lords.

Provisional order bills.

The promoters of provisional orders or certificates are exempt from the payment of fees: but the opponents are not so.<sup>2</sup>

Hybrid bills.

Fees are also chargeable on "hybrid bills," though in some special cases, where the objects of the bill were mostly of a public nature, they have been remitted; and petitioners against hybrid bills are charged with fees.

Collection of fees.

In both houses, there are officers whose special duty it is to take care that the fees are properly paid by the agents who are responsible

<sup>1</sup> In the case of Chippendall's Divorce Bill in 1850, the promoter petitioned to be allowed to prosecute the bill *in formâ pauperis*, and in both houses this privilege was conceded to him, on proof of his inability to pay the fees. The committee on the bill in the Commons, to whom his petition had been referred, distinguished his case from that of the suitor for any other kind of bill, and

considered that the remission of the fees would not afford a precedent in other parliamentary proceedings, 105 C. J. 563. In 1604, counsel was assigned to a party, in a private bill, *in formâ pauperis*, he "being a very poor man," 1 C. J. 141.

<sup>2</sup> In the Lords, the promoters are also charged fees at the committee stage in the case of *opposed* Provisional Order confirmation bills.



for the payment of them (see p. 629). If a parliamentary agent, or a solicitor acting as agent for any bill or petition, be reported as a defaulter in the payment of the fees of the house, the Speaker may order that he shall not be permitted to enter himself as a parliamentary agent, in any future proceeding, until further directions have been given.

In the House of Commons, all moneys arising from the fees of the house are treated as an appropriation in aid of the vote for the House of Commons offices. In the House of Lords, the fees upon private bills are carried to a fee fund, and, after deducting any amount which may be required to supplement the interest on the invested fee fund existing in 1868 for the payment of pensions, the balance is similarly treated as an appropriation in aid of the vote for the House of Lords offices, the salaries and expenses of the official establishment of the House of Lords being now also included in the estimates.

The last matter which need be mentioned in connection with the passing of private bills, is the taxation of the costs incurred by the promoters, opponents, and other parties. Prior to 1825, no provision had been made by either house, as in other courts, for the taxation of costs incurred by suitors in Parliament. In 1825, an Act was passed to establish such a taxation in the Commons ;<sup>1</sup> and in 1827, another Act was passed to effect the same object in the Lords.<sup>2</sup> Both these Acts, however, were very defective, and have since been repealed. By the present statutes<sup>3</sup> regulating the taxation of costs in each house, a regular system of taxation has been established.

In each house there is a taxing officer, having all the necessary powers of examining the parties and witnesses on oath, and of calling for the production of books or writings in the hands of either party to the taxation.

Lists of charges have been prepared, in pursuance of these Acts, in both houses, defining the maximum charges which parliamentary agents, solicitors and others will be allowed to charge for the various services usually rendered by them.<sup>4</sup>

Any person upon whom a demand is made by a parliamentary

<sup>1</sup> 6 Geo. IV. c. 123.

<sup>2</sup> 7 & 8 Geo. IV. c. 64.

<sup>3</sup> House of Commons Costs Taxation Act, 1847 (10 & 11 Vict. c. 69), and House of Lords Costs Taxation Act, 1849 (12 & 13 Vict. c. 38), as amended by the Parliamentary Costs Act, 1865

(28 & 29 Vict. c. 27), and the House of Commons Costs Taxation Act, 1879 (42 & 43 Vict. c. 17).

<sup>4</sup> These lists are printed for distribution to all persons who may apply for them.

agent or solicitor, for any costs incurred in respect of any proceedings in the house, or in complying with its standing orders, may apply to the taxing officer for the taxation of such costs. And any parliamentary agent or solicitor who may be aggrieved by the non-payment of his costs, may apply, in the same manner, to have his costs taxed, preparatory to the enforcement of his claim. The client, however, is required by the Act to make this application within six months after the delivery of the bill. But the Speaker in the Commons, or the Clerk of the Parliaments in the Lords, on receiving a report of special circumstances from the taxing officer, may direct costs to be taxed after the expiration of six months.

Costs of both houses taxed together.

The taxing officer of either house is enabled to tax the whole of a bill brought before him for taxation, whether the costs relate to the proceedings of that house only, or to the proceedings of both houses; and also other general costs incurred in reference to the private bill or petition. And each taxing officer may request the other, or the proper officer of any other court, to assist him in taxing any portion of a bill of costs. The proper officers of other courts may, in the same manner, request the assistance of the taxing officer of either house in the taxation of parliamentary costs; such costs when taxed and settled are returned by the taxing officer, with his opinion thereon, to the officer who made the request.<sup>1</sup>

Certificate to have the effect of a warrant to confess judgment.

In the case of costs not taxed at the request of the taxing officer of another court, the taxing officer, if requested so to do by the parties, reports his taxation in the Commons to the Speaker, and, in the Lords, to the Clerk of the Parliaments. If no objection be made within twenty-one days after such report, either party may obtain from the Speaker or from the Clerk of the Parliaments, as the case may be, a certificate of costs allowed, which in any action brought for the recovery of the amount so certified, will have the effect of a warrant of attorney to confess judgment, unless the defendant shall have pleaded that he is not liable to the payment of the costs.

Power of taxing officer extended.

By the House of Commons Costs Taxation Act, 1879 (42 & 43 Vict. c. 17), the powers of the taxing officer were extended to costs in respect of provisional orders and certificates, and bills promoted by public authorities, and opposition to public bills. He is also required to tax costs incurred in respect of any bill or provisional order or certificate, if requested to do so by a secretary of state, or by the local government board.

<sup>1</sup> 12 & 13 Vict. c. 78, s. 12.

## APPENDIX.

- I. STANDING AND SESSIONAL ORDERS.
- II. INSTRUCTIONS.
- III. EXAMPLES OF AMENDMENTS TO PROPOSED AMENDMENTS.
- IV. PROCLAMATIONS FOR THE SUMMONS OF PARLIAMENT.
- V. FORMS OF CERTIFICATES FOR ISSUE OF WRITS BY MR. SPEAKER DURING A RECESS.
- VI. PROCEDURE ON LORDS' AMENDMENTS.

### I.

#### STANDING ORDERS: PUBLIC BUSINESS.

##### HOUSE OF COMMONS.

##### SITTINGS OF THE HOUSE.

1.—[24th February, 1888, 2nd May, 1902, 2nd and 3rd April, 1906.] (1.) Un- Sittings of less the house otherwise order, the house shall meet every Monday, Tuesday, the house. Wednesday, and Thursday at a quarter to three of the clock.

(2.) At half-past eleven of the clock, the Speaker shall adjourn the house without question put, unless a bill originating in committee of ways and means, or unless proceedings made in pursuance of any Act of Parliament or standing order, or otherwise exempted as hereinafter provided from the operation of this standing order, be then under consideration.

(3.) At eleven of the clock on Mondays, Tuesdays, Wednesdays and Thursdays, except as aforesaid, and at five of the clock on Fridays, the proceedings on any business then under consideration shall be interrupted; and, if the house be in committee, the chairman shall leave the chair, and make his report to the house; and if a motion has been proposed for the adjournment of the house, or of the debate, or in committee that the chairman do report progress, or do leave the chair, every such dilatory motion shall lapse without question put.

(4.) Provided always, that on the interruption of business the closure may be moved; and if moved, or if proceedings under the closure rule be then in progress, the Speaker or chairman shall not leave the chair, until the questions consequent thereon and on any further motion, as provided in the rule "Closure of Debate," have been decided.

(5.) After the business under consideration at eleven and five, respectively, has been disposed of, no opposed business shall be taken.

(6.) All business appointed for any sitting, and not disposed of before the termination of the sitting, shall stand over until the next sitting, or until such

other sitting on any day on which the house ordinarily sits as the member in charge of the business may appoint.

(7.) A motion may be made by a minister of the crown at the commencement of public business, to be decided without amendment or debate, to the following effect: "That the proceedings on any specified business, if under discussion at eleven this night, be not interrupted under the standing order 'Sittings of the House,' " or to the following effect: That the proceedings on any specified business, if under discussion when the business is postponed, be resumed and proceeded with, though opposed, after the interruption of business.

(8.) Provided always, that after any business exempted from the operation of this order is disposed of, the remaining business of the sitting shall be dealt with according to the provisions applicable to business taken after eleven o'clock.

(9.) Provided also, that the chairman or deputy chairman of ways and means do take the chair as deputy speaker, when requested so to do by Mr. Speaker, without any formal communication to the house; and that Mr. Speaker shall nominate, at the commencement of every session, a panel of not more than five members to act as temporary chairmen of committees, when requested by the chairman of ways and means.

Duration  
of Friday  
sittings.

2.—[25th June, 1852, 8th April, 1902, and 3rd April, 1906.] The house shall meet every Friday, at twelve o'clock at noon, for private business, petitions, orders of the day, and notices of motions, and shall continue to sit until half-past five o'clock, unless previously adjourned.

Termina-  
tion of  
Friday  
sittings.

3.—[25th June, 1852, and 3rd April, 1906.] When such business has been disposed of, or at half-past five o'clock precisely, notwithstanding there may be business under discussion, Mr. Speaker shall adjourn the house without putting any question.

#### ARRANGEMENT OF PUBLIC BUSINESS.

Pre-  
cedence of  
business  
at differ-  
ent sit-  
tings.

4.—[11th April, 1902, and 3rd April, 1906.] Unless the house otherwise direct—

- (a.) Government business shall have precedence at every sitting except after a quarter-past eight on Tuesday and Wednesday and the sitting on Friday;
- (b.) After a quarter-past eight on Tuesday and Wednesday notices of motion and public bills, other than government bills, shall have precedence of government business; and any government business then under consideration shall, without question put, be postponed until the business having precedence of it is disposed of;
- (c.) After Easter government business shall have precedence during the whole of Tuesday;
- (d.) After Whitsuntide, until Michaelmas, government business shall have precedence at all sittings except the sittings on the third and fourth Fridays after Whit Sunday;
- (e.) After a quarter-past eight when government business has not precedence notices of motion shall have precedence of the orders of the day;
- (f.) At the sittings on Monday, Tuesday, Wednesday and Thursday the house will first proceed with petitions, motions for unopposed returns, and leave of absence to members, giving notices of motions and unopposed private business.

5.—[28th February, 1888.] On days on which government business has priority, the government may arrange such government business, whether orders of the day or notices of motions, in such order as they may think fit. Arrange-  
ment of  
govern-  
ment

6.—[29th February, 1888.] After Whitsuntide, public bills, other than government bills, shall be arranged on the order book so as to give priority to the bills most advanced, and Lords' amendments to public bills appointed to be considered, shall be placed first, to be followed by third readings, considerations of report, bills in progress in committee, bills appointed for committee, and second readings. Preced-  
ence of  
bills after  
Whitsun-  
tide.

7.—[5th August, 1853.] No notice shall be given beyond the period which shall include the four days next following on which notices are entitled to precedence; due allowance being made for any intervening adjournment of the house, and the period being in that case so far extended as to include four notice days falling during the sitting of the house. Period for  
which  
notices of  
motion  
may be  
given.

#### PRIVATE BUSINESS.

8.—[1st May, 1902, and 3rd April, 1906.] (1.) No opposed private business shall be set down for the sittings on Friday, or for a quarter-past eight on Wednesday between Easter and Whitsuntide. Time for  
taking  
private  
business.

(2.) All private business which is set down for Monday, Tuesday, Wednesday, or Thursday, and is not disposed of by three of the clock shall, without question put, be postponed until such time as the chairman of ways and means may determine.

(3.) Provided that such private business shall always be taken at a quarter-past eight on Monday, Tuesday, Wednesday or Thursday or, as soon thereafter as any motion for the adjournment of the house standing over has been disposed of, and that such postponed business shall be distributed as near as may be proportionately between the sittings on which government business has precedence and the other sittings.

(4.) No opposed private business other than that then under consideration shall be taken after half-past nine of the clock.

(5.) Unopposed private business shall have precedence of opposed private business.

#### QUESTIONS.

9.—[7th March, 1888, 29th April, 1902, 3rd April, 1906, and 28th September, 1915.] (1.) Notices of questions shall be given by members in writing to the clerk at the table, without reading them *vivâ voce* in the house, unless the consent of the Speaker to any particular question has been previously obtained. Questions  
to mem-  
bers.

(2.) Questions shall be taken on Monday, Tuesday, Wednesday and Thursday, after private business has been disposed of, and not later than three of the clock.

(3.) No questions shall be taken after a quarter before four of the clock, except questions which have not been answered in consequence of the absence of the minister to whom they are addressed, and questions which have not appeared on the paper, but which are of an urgent character, and relate either to matters of public importance or to the arrangement of business.

(4.) Any member who desires an oral answer to his question may distinguish

it by an asterisk, but notice of any such question must appear at latest on the notice paper circulated on the day before that on which an answer is desired.

(5.) If any member does not distinguish his question by an asterisk, or if he or any other member deputed by him is not present to ask it, or if it is not reached by a quarter before four of the clock, the minister to whom it is addressed shall cause an answer to be printed in the Official Report of the Parliamentary Debates, unless the member has signified his desire to postpone the question.

#### ADJOURNMENT ON MATTER OF PUBLIC IMPORTANCE.

**10.**—[27th November, 1882, 29th April, 1902, and 3rd April, 1906.] No motion for the adjournment of the house shall be made until all the questions asked at the commencement of business on Monday, Tuesday, Wednesday, or Thursday have been disposed of, and no such motion shall be made before the orders of the day, or notices of motion have been entered upon, except by leave of the house, unless a member rising in his place shall propose to move the adjournment for the purpose of discussing a definite matter of urgent public importance, and not less than forty members shall thereupon rise in their places to support the motion, or unless, if fewer than forty members and not less than ten shall thereupon rise in their places, the house shall, on a division, upon question put forthwith, determine whether such motion shall be made. If the motion is so supported, or the house so determines that it shall be made, it shall stand over until a quarter-past eight on the same day.

#### ANTICIPATION.

**10A.**—[5th May, 1914.] In determining whether a discussion is out of order on the ground of *anticipation*, regard shall be had by Mr. Speaker to the probability of the matter anticipated being brought before the house within a reasonable time.

#### BRINGING IN BILLS AND NOMINATING SELECT COMMITTEES AT COMMENCEMENT OF PUBLIC BUSINESS.

**11.**—[7th March, 1888, and 2nd May, 1902.] On Tuesdays and Wednesdays, and, if set down by the government on Mondays and Thursdays, motions for leave to bring in bills, and for the nomination of select committees, may be set down for consideration at the commencement of public business. If such motions be opposed, Mr. Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes any such motion respectively, may, without further debate, put the question thereon, or the question, that the debate be now adjourned.

#### ORDERS OF THE DAY.

**12.**—[5th August, 1853.] At the time fixed for the commencement of public business, on days on which orders have precedence of notices of motions, and after the notices of motions have been disposed of, on all other days, Mr. Speaker shall direct the clerk at the table to read the orders of the day, without any question being put.

**13.**—[5th August, 1853, and 7th March, 1888.] The orders of the day shall be disposed of in the order in which they stand upon the paper; the right being

reserved to His Majesty's ministers of placing government orders or motions at the head of the list, in the rotation in which they are to be taken on the days on which government bills have precedence.

#### SUPPLY AND WAYS AND MEANS.

14.—[28th July, 1870.] This house will, in future, appoint the committees of supply and ways and means at the commencement of every session, so soon as an address has been agreed to, in answer to His Majesty's speech.

15.—[28th April, 1902, and 3rd April, 1906.] (1.) As soon as the committee of supply has been appointed and estimates have been presented, the business of supply shall, until disposed of, be the first order of the day on Thursday, unless the house otherwise order on the motion of a minister of the crown, moved at the commencement of public business, to be decided without amendment or debate.

(2.) Not more than twenty days, being days before the 5th of August, shall be allotted for the consideration of the annual estimates for the army, navy, and civil services, including votes on account. The days allotted shall not include any day on which the question has to be put that the Speaker do leave the chair, or any day on which the business of supply does not stand as first order.

(3.) Provided that the days occupied by the consideration of estimates supplementary to those of a previous session or of any vote of credit, or of votes for supplementary or additional estimates presented by the government for war expenditure, or for any new service not included in the ordinary estimates for the year, shall not be included in the computation of the twenty days aforesaid.

(4.) Provided also that on motion made after notice, to be decided without amendment or debate, additional time, not exceeding three days, may be allotted for the purposes aforesaid, either before or after the 5th of August.

(5.) On a day so allotted, no business other than the business of supply shall be taken before eleven, and no business in committee or proceedings on report of supply shall be taken after eleven, whether a general order exempting business from interruption under the standing order (Sittings of the House) is in force or not, unless the house otherwise order on the motion of a minister of the crown, moved at the commencement of public business, to be decided without amendment or debate.

(6.) Of the days so allotted, not more than one day in committee shall be allotted to any vote on account, and not more than one sitting to the report of that vote. At eleven on the close of the day on which the committee on that vote is taken, and at the close of the sitting on which the report of that vote is taken, the chairman of committees or the Speaker, as the case may be, shall forthwith put every question necessary to dispose of the vote or the report.

(7.) At ten of the clock on the last day but one of the days so allotted the chairman shall forthwith put every question necessary to dispose of the vote then under consideration, and shall then forthwith put the question with respect to each class of the civil service estimates that the total amount of the votes outstanding in that class be granted for the services defined in the class, and shall in like manner put severally the questions that the total amounts of the votes outstanding in the estimates for the navy, the army, and the revenue departments be granted for the services defined in those estimates.

(8.) At ten of the clock on the last, not being earlier than the twentieth, of the

allotted days, the Speaker shall forthwith put every question necessary to dispose of the report of the resolution then under consideration, and shall then forthwith put, with respect to each class of the civil service estimates, the question, that the house doth agree with the committee in all the outstanding resolutions reported in respect of that class, and shall then put a like question with respect to all the resolutions outstanding in the estimates for the navy, the army, the revenue departments, and other outstanding resolutions severally.

(9.) On the days appointed for concluding the business of supply, the consideration of that business shall not be anticipated by a motion of adjournment, and no dilatory motion shall be moved on proceedings for that business and the business shall not be interrupted under any standing order.

(10.) Any additional estimate for any new matter not included in the original estimates for the year, shall be submitted for consideration in the committee of supply on some day not later than two days before the committee is closed.

(11.) For the purposes of this order two Fridays shall be deemed equivalent to a single sitting on any other day.

Days for  
com-  
mittees of  
supply  
and ways  
and  
means.

**16.**—[3rd May, 1861, and 2nd May, 1902.] The committees of supply and ways and means shall be fixed for Monday, Wednesday, and Thursday, and may also be appointed for any other day on which the house shall meet for despatch of business.

When  
chair to be  
left with-  
out ques-  
tion put.

**17.**—[27th November, 1882, 7th March, 1888, and 17th February, 1902.] Whenever the committee of supply stands as an order of the day, Mr. Speaker shall leave the chair without putting any question, unless on first going into supply on the army, navy, or civil service estimates respectively, or on any vote of credit, an amendment be moved, or question raised, relating to the estimates proposed to be taken in supply.

#### ORDER IN THE HOUSE.

Order in  
debate.

**18.**—[28th February, 1880, 22nd November, 1882, 7th March, 1901, and 17th February, 1902.] (1.) Whenever any member shall have been named by the Speaker, or by the chairman of a committee of the whole house, immediately after the commission of the offence of disregarding the authority of the chair, or of abusing the rules of the house by persistently and wilfully obstructing the business of the house, or otherwise, then, if the offence has been committed by such member in the house, the Speaker shall forthwith put the question, on a motion being made, no amendment, adjournment, or debate being allowed, "That such member be suspended from the service of the house;" and, if the offence has been committed in a committee of the whole house, the chairman shall forthwith suspend the proceedings of the committee and report the circumstance to the house; and the Speaker shall on a motion being made thereupon put the same question, without amendment, adjournment, or debate, as if the offence had been committed in the house itself.

(2.) If any member be suspended, under this order, his suspension on the first occasion shall continue for one week, on the second occasion for a fortnight, and on the third, or any subsequent occasion, for a month.

(3.) Provided always, that suspension from the service of the house shall not exempt the member so suspended from serving on any committee for the consideration of a private bill to which he may have been appointed before his suspension.



(4.) Provided also, that not more than one member shall be named at the same time, unless several members, present together, have jointly disregarded the authority of the chair.

(5.) Provided also, that if any member, or members acting jointly, who have been suspended under this order from the service of the house, shall refuse to obey the direction of the Speaker, when severally summoned under the Speaker's orders by the serjeant-at-arms to obey such direction, the Speaker shall call the attention of the house to the fact that recourse to force is necessary in order to compel obedience to his direction, and the member or members named by him as having refused to obey his direction shall thereupon and without further question put be suspended from the service of the house during the remainder of the session.

(6.) Provided always, that nothing in this resolution shall be taken to deprive the house of the power of proceeding against any member according to ancient usages.

*Note.*—The words printed in erased type were struck out on the 13th February, 1902, but the proceedings on the amendment of the standing order were not resumed after the 17th February, 1902.

19.—[27th November, 1882, and 28th February, 1888.] Mr. Speaker or the chairman, after having called the attention of the house, or of the committee, to the conduct of a member, who persists in irrelevance, or tedious repetition either of his own arguments, or of the arguments used by other members in debate, may direct him to discontinue his speech. Irrelevance or repetition.

• 20.—[28th February, 1888.] (1.) Mr. Speaker or the chairman shall order members whose conduct is grossly disorderly to withdraw immediately from the house during the remainder of that day's sitting; and the serjeant-at-arms shall act on such orders as he may receive from the chair in pursuance of this resolution. But if, on any occasion, Mr. Speaker or the chairman deems that his powers under this standing order are inadequate, he may name such member or members in pursuance of the standing order "Order in Debate," or he may call upon the house to adjudge upon the conduct of such member or members. Disorderly conduct.

(2.) Provided always, that members who are ordered to withdraw under this standing order, or who are suspended from the service of the house under the standing order "Order in Debate," shall forthwith withdraw from the precincts of the house, subject, however, in the case of such suspended members, to the proviso in that standing order regarding their service on private bill committees.

21.—[17th February, 1902.] In the case of grave disorder arising in the house the Speaker may, if he thinks it necessary to do so, adjourn the house without question put, or suspend any sitting for a time to be named by him. Power of Speaker to adjourn house or suspend sitting.

#### ADJOURNMENT AND COUNTING OUT.

22.—[27th November, 1882.] When a motion is made for the adjournment of a debate or of the house during any debate, or that the chairman of a committee do report progress, or do leave the chair, the debate thereupon shall be confined to the matter of such motion; and no member, having moved or seconded any such motion, shall be entitled to move or second any similar motion during the same debate. Debate on motion for adjournment.

• 23.—[27th November, 1882, and 28th February, 1888.] If Mr. Speaker or the chairman of a committee of the whole house shall be of opinion that a motion Dilatory motion

in abuse of for the adjournment of a debate, or of the house, during any debate, or that the rules of the house, he may forthwith put the question thereupon from the chair, or he may decline to propose the question thereupon to the house.

**24.**—[3rd May, 1861.] While the committees of supply and ways and means are open, the house, when it meets on Friday, shall, at its rising, stand adjourned until the following Monday, without any question being put, unless the house shall otherwise resolve.

**25.**—[1st May, 1902, and 3rd April, 1906.] The house shall not be counted between a quarter-past eight and a quarter-past nine o'clock, but if on a division taken on any business between a quarter-past eight and a quarter-past nine o'clock it appears that forty members are not present, the business shall stand over until the next sitting of the house, and the next business shall be taken.

### CLOSURE OF DEBATE.

**26.**—[18th March, 1887, 7th March, 1888, and 28th July, 1909.] (1.) After a question has been proposed, a member rising in his place may claim to move, "That the question be now put," and, unless it shall appear to the chair that such motion is an abuse of the rules of the house, or an infringement of the rights of the minority, the question, "That the question be now put," shall be put forthwith, and decided without amendment or debate.

(2.) When the motion, "That the question be now put," has been carried, and the question consequent thereon has been decided any further motion may be made (the assent of the chair as aforesaid not having been withheld) which may be requisite to bring to a decision any question already proposed from the chair: and also if a clause be then under consideration, a motion may be made (the assent of the chair as aforesaid not having been withheld), that the question, that certain words of the clause defined in the motion stand part of the clause, or that the clause stand part of, or be added to, the bill, be now put. Such motions shall be put forthwith, and decided without amendment or debate.

(3.) A motion may be made (the assent of the chair, as aforesaid, not having been withheld) that, with respect to certain words in a motion, clause, or schedule under debate defined in the motion, the chair be empowered to select the amendments to be proposed. Such a motion shall be put forthwith and decided without amendment or debate. If the motion is carried the chair shall then and thereafter exercise the power of selecting the amendments to be proposed on the words so defined. The chair may, if the chair thinks fit, ask any member who has given notice of an amendment to give such explanation of the object of the amendment as may enable the chair to form a judgment upon it. Provided that the power of selection shall not be exercised by the chairman of a standing committee.

(4.) Provided always, That this rule shall be put in force only when the Speaker or the chairman of ways and means or deputy chairman is in the chair.

**27.**—[28th February, 1888, and 28th July, 1909.] Questions for the closure of debate or selection of amendments under standing order "Closure of Debate" shall be decided in the affirmative, if, when a division be taken, it appears by the numbers declared from the chair, that not less than one hundred members voted in the majority in support of the motion.

## DIVISIONS.

**28.**—[12th December, 1906.] (1.) If the opinion of the speaker or chairman as to the decision of a question is challenged he shall direct that the lobby be cleared. Procedure on divisions.

(2.) After the lapse of two minutes from this direction he shall put the question again, and, if his opinion is again challenged, he shall nominate tellers.

(3.) After the lapse of six minutes from this direction he shall direct that the doors giving access to the division lobbies be locked.

**29.**—[12th December, 1906.] (1.) A member may vote in a division although he did not hear the question put. Voting of members.

(2.) A member is not obliged to vote.

**30.**—[29th February, 1888.] Mr. Speaker or the chairman may, after the lapse of two minutes as indicated by the sand-glass, if in his opinion the division is frivolously or vexatiously claimed, take the vote of the house or committee, by calling upon the members who support and who challenge his decision, successively to rise in their places; and he shall thereupon, as he thinks fit, either declare the determination of the house or committee, or name tellers for a division. And, in case there is no division, the Speaker or chairman shall declare to the house or the committee the number of the minority who had challenged his decision, and their names shall be thereupon taken down in the house, and printed with the lists of divisions. Divisions frivolously claimed.

## PUBLIC BILLS.

**31.**—[5th August, 1853, and 17th February, 1902.] When any bill shall be presented by a member, in pursuance of an order of this house, or shall be brought from the Lords, the questions, "That this bill be now read a first time," and "That this bill be printed," shall be decided without amendment or debate. Presentation or introduction and first reading.

(2.) A member may, if he thinks fit, after notice, present a bill without an order of the house for its introduction; and when a bill is so presented, the title of the bill shall be read by the clerk at the table, and the bill shall then be deemed to have been read a first time, and shall be printed.

**32.**—[5th August, 1853.] When a bill or other matter (except supply or ways and means) has been partly considered in committee, and the chairman has been directed to report progress, and ask leave to sit again, and the house shall have ordered that the committee shall sit again on a particular day, the Speaker shall, when the order for the committee has been read, forthwith leave the chair, without putting any question, and the house shall thereupon resolve itself into such committee. Procedure on reading order for committee.

**33.**—[19th July, 1854.] Bills which may be fixed for consideration in committee on the same day, whether in progress or otherwise, may be referred together to a committee of the whole house, which may consider on the same day all the bills so referred to it, without the chairman leaving the chair on each separate bill, provided that, with respect to any bill not in progress, if any member shall object to its consideration in committee, together with other bills, the order of the day for the committee on such bill shall be postponed. Reference of bills together to committee.

**34.**—[19th July, 1854.] It shall be an instruction to all committees of the whole house to which bills may be committed, that they have power to make such amendments therein as they shall think fit, provided they be relevant to the subject-matter of the bill; but that if any such amendments shall not be Amendments in committee.

within the title of the bill, they do amend the title accordingly, and do report the same specially to the house.

Postponement of preamble.

**35.**—[27th November, 1882.] In committee on a bill, the preamble shall stand postponed until after the consideration of the clauses, without question put.

Discontinuance of first and second reading stages in committee.

**36.**—[19th July, 1854.] The questions for reading a bill a first and second time in a committee of the whole house shall be discontinued.

**37.**—[19th July, 1854.] In going through a bill no questions shall be put for the filling up words already printed in *italics*, and commonly called blanks, unless exception be taken thereto; and if no alterations have been made in the words so printed in *italics*, the bill shall be reported without amendments, unless other amendments have been made thereto.

Question not to be put on blanks.

**38.**—[19th July, 1854.] On a clause being offered in the committee on the bill, or on the consideration of report of a bill, Mr. Speaker or the chairman shall desire the member to bring up the same, whereupon it shall be read a first time without question put, but no clause shall be offered on consideration of report without notice.

Procedure on offer of new clause.

**39.**—[5th August, 1853.] At the close of the proceedings of a committee of the whole house on a bill, the chairman shall report the bill forthwith to the house, and when amendments shall have been made thereto, the same shall be received, without debate, and a time appointed for taking the same into consideration.

Consideration of bill, as amended.

**40.**—[27th November, 1882.] When the order of the day for the consideration of a bill, as amended in the committee of the whole house, has been read, the house shall proceed to consider the same without question put, unless the member in charge thereof shall desire to postpone its consideration, or a motion shall be made to recommit the bill.

Amendments on report.

**41.**—[28th February, 1888.] Upon the report stage of any bill, no amendment may be proposed which could not have been proposed in committee without an instruction from the house.

Amendments on third reading.

**42.**—[21st July, 1856.] No amendments, not being merely verbal, shall be made to any bill on the third reading.

Lords' amendments.

**43.**—[19th July, 1854.] Lords' amendments to public bills shall be appointed to be considered on a future day, unless the house shall order them to be considered forthwith.

Pecuniary penalties.

**44.**—[24th July, 1849.] With respect to any bill brought to this house from the House of Lords, or returned by the House of Lords to this house, with amendments, whereby any pecuniary penalty, forfeiture, or fee shall be authorized, imposed, appropriated, regulated, varied, or extinguished, this house will not insist on its ancient and undoubted privileges in the following cases:—

1. When the object of such pecuniary penalty or forfeiture is to secure the execution of the Act, or the punishment or prevention of offences.

2. Where such fees are imposed in respect of benefit taken or service rendered under the Act, and in order to the execution of the Act, and are not made payable into the treasury or exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus.

3. When such bill shall be a private bill for a local or personal Act.

**45.**—[24th July, 1849.] The precise duration of every temporary law shall be expressed in a distinct clause at the end of the bill.

Temporary laws.

## STANDING COMMITTEES.

46.—[16th April, 1907.] (1.) When a bill has been read a second time it shall stand committed to one of the standing committees, unless the house, on motion to be decided without amendment or debate, otherwise order; and such a motion shall not require notice, must be made immediately after the bill is read a second time, may be made by any member, and may, though opposed, be decided after the expiration of the time for opposed business. But this order shall not apply to—

Commit-  
tal of  
bills.

- (a) Bills for imposing taxes or Consolidated Fund or Appropriation Bills; or
- (b) Bills for confirming Provisional Orders.

(2.) Provided that the house may, on motion made by the member in charge of a bill, commit the bill to a standing committee in respect of some of its provisions, and to a committee of the whole house in respect of other provisions, and that if such a motion is opposed the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who makes and from the member who opposes the motion, shall without further debate put the question thereon.

(3.) Where a bill has been committed to a standing committee, or has been so committed in respect of any provision, then, at the report stage of the bill or provision, the rule against speaking more than once shall not apply to the member in charge of the bill or to the mover of any amendment or new clause in respect of that amendment or clause.

47.—[7th March, 1888, 1st May, 1902, 9th April, 1906, and 16th April, 1907.]

Constitu-  
tion of  
standing  
commit-  
tees.

(1.) Four standing committees shall be appointed for the consideration of all bills committed to them; and the procedure in such committees shall be the same as in a select committee, unless the house shall otherwise order; provided, that strangers shall be admitted, except when the committee shall order them to withdraw; and the said committees shall not sit whilst the house is sitting, except in pursuance of a resolution of the committee, moved by the member in charge of the bill before the committee, and decided without amendment or debate, and shall not sit after four p.m., without the order of the house; provided also, that any notice of amendment to any clause in a bill which may be committed to a standing committee, given by any honourable member in the house, shall stand referred to such committee; provided also, that twenty be the quorum of such standing committees.

(2.) One of the standing committees shall be appointed for the consideration of all public bills relating exclusively to Scotland and committed to a standing committee, and shall consist of all the members representing Scottish constituencies, together with not more than fifteen other members to be nominated in respect of any bill by the committee of selection, who shall have regard in such nomination to the approximation of the balance of parties in the committee to that in the whole house, and shall have power from time to time to discharge, for non-attendance or at their own request, the members so nominated by them, and to appoint others in substitution for those discharged.

(3.) Subject as aforesaid the bills committed to a standing committee shall be distributed among the committees by Mr. Speaker.

(4.) In all but one of the standing committees government bills shall have precedence.

(5.) Standing order 19 (as to irrelevance and repetition) and standing orders 26 and 27 (as to closure) shall apply to standing committees, with the substitution in standing order 26 of the chairman of the committee for the chairman of ways and means, and, in standing order 27 of 20 for 100 as the number necessary to render the majority effective for the closure, and the chairman of a standing committee shall have the like powers as the chairman of a committee of the whole house has under standing order 23 (as to dilatory motions).

Nomina-  
tion of  
standing  
commit-  
tees.

**48.**—[7th March, 1888, and 16th April, 1907.] Each of the said standing committees shall consist of not less than sixty nor more than eighty members, to be nominated by the committee of selection, who shall have regard to the classes of bills committed to such committees, to the composition of the house, and to the qualifications of the members selected; and shall have power to discharge members from time to time for non-attendance or at their own request, and to appoint others in substitution for those discharged. Provided that, for the consideration of all public bills relating exclusively to Wales and Monmouthshire, the committee shall be so constituted as to comprise all members sitting for constituencies in Wales and Monmouthshire. The committee of selection shall also have power to add not more than fifteen members to a standing committee in respect of any bill referred to it, to serve on the committee during the consideration of such bill. Provided that this order shall not apply to the standing committee on Scottish bills.

Chairmen  
of stand-  
ing com-  
mittees.

**49.**—[7th March, 1888, and 16th April, 1907.] The committee of selection shall nominate a chairman's panel, to consist of not less than four nor more than eight members, of whom three shall be a quorum, and the chairman's panel shall appoint from among themselves the chairman of each standing committee, and may change the chairman so appointed from time to time.

Report of  
bills com-  
mitted to  
standing  
commit-  
tees.

**50.**—[7th March, 1888, and 22nd April, 1901.] All bills which shall have been committed to one of the said standing committees shall, when reported to the house, be proceeded with, as if they had been reported from a committee of the whole house: Provided only, that all bills reported from a standing committee, whether amended or not, shall be considered on report by the house without question put, unless the member in charge thereof desire to postpone its consideration, or a motion be made to re-commit the bill.

#### COMMITTEES OF THE WHOLE HOUSE

When  
Speaker  
leaves  
chair  
without  
question  
put.

**51.**—[28th February, 1888, 17th February, 1891, and 4th March, 1901.] Whenever an order of the day is read for the house to resolve itself into committee (not being a committee to consider a message from the Crown, or the committee of supply, or the committee on the East India revenue accounts), Mr. Speaker shall leave the chair without putting any question, and the house shall thereupon resolve itself into such committee, unless notice of an instruction thereto has been given, when such instruction shall be first disposed of.

When  
chairman  
of com-  
mittee  
leaves  
chair  
without  
question  
put.

**52.**—[27th November, 1882.] When the chairman of a committee has been ordered to make a report to the house, he shall leave the chair without question put.

**53.**—[19th July, 1854.] Every report from a committee of the whole house shall be brought up without any question being put.

Report  
to be  
brought  
up with-  
out ques-  
tion put

## SELECT COMMITTEES.

**54.**—[21st July, 1856, and 7th March, 1888.] All committees shall have leave <sup>Sittings.</sup> to sit, except while the house is at prayers, during the sitting, and notwithstanding any adjournment of the house.

**55.**—[25th June, 1852.] No select committee shall, without leave of the Number, house, consist of more than fifteen members; such leave shall not be moved for without notice; and in the case of members proposed to be added or substituted, after the first appointment of the committee, the notice shall include the names of the members proposed to be added or substituted.

**56.**—[25th June, 1852.] Every member intending to move for the appoint- <sup>Consent of</sup> ment of a select committee shall endeavour to ascertain previously whether each member proposed to be named by him on such committee will give his attendance thereupon.

**57.**—[25th June, 1852.] Every member intending to move for the appoint- <sup>Notice of</sup> ment of a select committee shall, one day next before the nomination of such committee, place on the notices <sup>names of</sup> the names of the members intended to be proposed by him to be members of such committee.

**58.**—[25th June, 1852.] Lists shall be affixed in some conspicuous place in <sup>Lists of</sup> the committee office, and in the lobby of the house, of all members serving on each select committee.

**59.**—[25th June, 1852.] To every question asked of a witness under examina- <sup>Entry of</sup> tion, in the proceedings of any select committee, there shall be prefixed in the minutes of the evidence the name of the member asking such question. <sup>questions asked.</sup>

**60.**—[25th June, 1852.] The names of the members present each day on the <sup>Entry of</sup> sitting of any select committee shall be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and <sup>members attending.</sup> reported to the house on the report of such committee.

**61.**—[25th June, 1852.] In the event of any division taking place in any <sup>Entry of</sup> select committee, the question proposed, the name of the proposer, and the <sup>divisions.</sup> respective votes thereupon of each member present, shall be entered on the minutes of evidence or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee.

**62.**—[25th June, 1852.] If, at any time during the sitting of a select committee <sup>Quorum.</sup> of this house the quorum of members fixed by the house shall not be present, the clerk of the committee shall call the attention of the chairman to the fact, who shall thereupon suspend the proceedings of the committee until a quorum be present, or adjourn the committee to some future day.

**63.**—[9th August, 1875.] Every select committee having power to send for <sup>Power to</sup> persons, papers, and records, shall have leave to report their opinion and observa- <sup>report</sup> tions, together with the minutes of evidence taken before them, to the house, <sup>opinion</sup> and also to make a special report of any matters which they may think fit to <sup>and obser-</sup> bring to the notice of the house.

**64.**—[25th June, 1852, and 21st July, 1856.] The Serjeant-at-arms attending <sup>Notice of</sup> this house shall, from time to time, when the house is going to prayers, give <sup>prayers.</sup> notice thereof to all committees; and all proceedings of committees, after such notice, are declared to be null and void, unless such committees be otherwise empowered to sit after prayers.



## ADDRESS IN ANSWER TO KING'S SPEECH.

Discontin-  
uance of  
stages on  
address in  
answer to  
King's  
speech.

**65.**—[29th February, 1888.] The stages of committee and report on the address to His Majesty to convey the thanks of the house for His Majesty's most gracious speech in both houses of parliament, at the opening of the session, shall be discontinued.

## PUBLIC MONEY.

Recommen-  
dation from  
crown when  
re-quired on  
applica-  
tion

**66.**—[11th June, 1713, 25th June, 1852, and 20th March, 1866.] This house will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by parliament, unless recommended from the Crown.

relating to  
public  
money.

**67.**—[29th March, 1707.] This house will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole house.

Restric-  
tions on  
receipt of  
petitions  
relating to  
public  
money.

**68.**—[25th March, 1715.] This house will not receive any petition for compounding any sum of money owing to the Crown, upon any branch of the revenue, without a certificate from the proper officer or officers annexed to the said petition, stating the debt, what prosecutions have been made for the recovery of such debt, and setting forth how much the petitioner and his security are able to satisfy thereof.

**69.**—[22nd February, 1821.] This house will not proceed upon any motion for an address to the Crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole house.

Procedure  
on applica-  
tion for  
charge on  
revenues  
of India.

**70.**—[21st July, 1856.] This house will not receive any petition, or proceed upon any motion for a charge upon the revenues of India, but what is recommended by the Crown.

**71.**—[20th March, 1866.] If any motion be made in the house for any aid, grant, or charge upon the public revenue, whether payable out of the Consolidated Fund, or out of money to be provided by Parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the house shall think fit to appoint, and then it shall be referred to a committee of the whole house before any resolution or vote of the house do pass therein.

## PACKET AND TELEGRAPH CONTRACTS.

Contracts  
to be ap-  
proved by  
resolution.

**72.**—[13th July, 1869.] In all contracts extending over a period of years, and creating a public charge, actual or prospective, entered into by the government for the conveyance of mails by sea, or for the purpose of telegraphic communications beyond sea, there should be inserted the condition that the contract shall not be binding until it has been approved of by a resolution of the house.

Contracts  
to be laid  
on table.

**73.**—[13th July, 1869.] Every such contract, when executed, shall forthwith, if Parliament be then sitting, or, if Parliament be not then sitting, within fourteen days after it assembles, be laid upon the table of the house, accompanied by a minute of the lords of the treasury, setting forth the grounds on which they have proceeded in authorizing it.

Contracts  
to be con-  
firmed by

**74.**—[13th July, 1869.] In cases where any such contract requires to be



confirmed by Act of Parliament, the bill for that purpose shall not be introduced public and dealt with as a private bill, and power to the government to enter into agreements by which obligations at the public charge shall be undertaken, shall not be given in any private Act.

## PUBLIC ACCOUNTS.

75.—[3rd April, 1862, and 28th March, 1870.] There shall be a standing committee, to be designated "The Committee of Public Accounts," for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, to consist of eleven members, who shall be nominated at the commencement of every session, and of whom five shall be a quorum. Standing committee on public accounts.

## PUBLIC PETITIONS.

76.—[14th April, 1842, and 5th August, 1853.] Every member offering to present a petition to the house, not being a petition for a private bill, or relating to a private bill before the house, shall confine himself to a statement of the parties from whom it comes, of the number of signatures attached to it, and of the material allegations contained in it, and to the reading of the prayer of such petition. Presentation of petitions.

77.—[14th April, 1842, and 5th August, 1853.] Every such petition not containing matter in breach of the privileges of the house, and which, according to the rules or usual practice of this house, can be received, shall be brought to the table by the direction of the Speaker, who shall not allow any debate, or any member to speak upon, or in relation to, such petition: but it may be read by the Clerk at the table, if required. No debate on presentation.

78.—[14th April, 1842, and 5th August, 1853.] In the case of such petition complaining of some present personal grievance, for which there may be an urgent necessity for providing an immediate remedy, the matter contained in such petition may be brought into discussion on the presentation thereof. Petitions as to present personal grievance.

79.—[14th April, 1842, and 5th August, 1853.] All other such petitions, after they shall have been ordered to lie on the table, shall be referred to the committee on Public Petitions, without any question being put: but if any such petition relate to any matter or subject, with respect to which the member presenting it has given notice of a motion, and the said petition has not been ordered to be printed by the committee, such member may, after notice given, move that such petition be printed with the votes. Reference of petitions to committee on Public Petitions.

80.—[14th April, 1842, and 5th August, 1853.] Subject to the above regulations, petitions against any resolution or bill imposing a tax or duty for the current service of the year, shall be henceforth received, and the usage under which the house has refused to entertain such petitions shall be discontinued. Petitions against imposition of a tax.

## SPEAKER.

81.—[20th July, 1855, 11th February, 1902, and 28th July, 1909.] (1.) When ever the house shall be informed by the Clerk at the table of the unavoidable absence of Mr. Speaker, the chairman of the committee of ways and means shall perform the duties and exercise the authority of Speaker in relation to all proceedings of this house, as deputy Speaker, until the next meeting of the house, Deputy Speaker and chairman.

and so on from day to day, on the like information being given to the house, until the house shall otherwise order; provided that if the house shall adjourn for more than twenty-four hours, the deputy Speaker shall continue to perform the duties and exercise the authority of Speaker for twenty-four hours only after such adjournment.

(2.) At the commencement of every parliament or from time to time, as necessity may arise, the house may appoint a deputy chairman, who shall, whenever the chairman of ways and means is absent from the chair, be entitled to exercise all the powers vested in the chairman of ways and means, including his powers as deputy Speaker.

#### MEMBERS.

Seats not to be taken before prayers.

**82.**—[6th April, 1835.] No member's name shall be affixed to any seat in the house before the hour of prayers; and the Speaker shall give directions to the door-keepers accordingly.

Seats secured at prayers.

**83.**—[29th April, 1858.] Any member having secured a seat at prayers shall be entitled to retain the same until the rising of the house.

Time for taking the oath.

**84.**—[30th April, 1866.] Members may take, and subscribe the oath required by law, at any time during the sitting of the house, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of: but no debate or business shall be interrupted for that purpose.

Affirmation in lieu of oath.

**85.**—[1st July, 1880.] Every person returned as a member of this house, who may claim to be a person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath, shall henceforth (notwithstanding so much of the resolution adopted by this house on the 22nd day of June, 1880, as relates to affirmation) be permitted, without question, to make and subscribe a solemn affirmation in the form prescribed by "The Parliamentary Oaths Act, 1866," as altered by "The Promissory Oaths Act, 1868," subject to any liability by statute.

#### WITNESSES.

Administration of oath in house.

**86.**—[20th February, 1872.] Any oath or affirmation taken or made by any witness before the house, or a committee of the whole house, may be administered by the Clerk at the table.

Administration of oath in select committee.

**87.**—[20th February, 1872.] Any oath or affirmation taken or made by any witness before a select committee may be administered by the chairman, or by the clerk attending such committee.

#### STRANGERS.

Power of Serjeant-at-Arms with respect to strangers.

**88.**—[5th February, 1845.] The Serjeant-at-arms attending this house shall, from time to time, take into his custody any stranger whom he may see, or who may be reported to him to be, in any part of the house or gallery appropriated to the members of this house, and also any stranger who, having been admitted into any other part of the house or gallery, shall misconduct himself, or shall not withdraw when strangers are directed to withdraw, while the house, or any committee of the whole house, is sitting; and no person so taken into custody shall be discharged out of custody without the special order of the house.

89.—[5th February, 1845.] No member of this house shall presume to bring any stranger into any part of the house or gallery appropriated to the members of this house, while the house, or a committee of the whole house, is sitting. Places to which strangers are not admitted.

90.—[7th March, 1888.] If, at any sitting of the house, or in committee, any member shall take notice that strangers are present, Mr. Speaker or the chairman (as the case may be) shall forthwith put the question "That strangers be ordered to withdraw," without permitting any debate or amendment: provided that the Speaker or the chairman may, whenever he thinks fit, order the withdrawal of strangers from any part of the house. Withdrawal of strangers from the house.

## LETTERS.

91.—[25th June, 1852.] To prevent the intercepting or losing of letters directed to members of this house, the person appointed to bring letters from the General Post-Office to this house, or some other person to be appointed by the postmaster-general, shall for the future, every day during the session of Parliament, Sundays excepted, constantly attend from ten of the clock in the morning, till seven in the afternoon, at the place appointed for the delivery of the said letters, and take care, during his stay there, to deliver the same to the several members to whom they shall be directed, or to their known servant or servants, or other persons bringing notes under the hands of the members sending for the same. Custody of letters addressed to members.

92.—[25th June, 1852.] The said officer shall, upon his going away, lock up such letters as shall remain undelivered; and no letter shall be delivered but within the hours aforesaid. Directions to officer in charge of letters.

93.—[25th June, 1852.] The said orders shall be sent to the postmaster-general at the commencement of each session. Orders to be sent to postmaster-general.

94.—[25th June, 1852.] When any letter or packet delivered to this house shall come to Mr. Speaker, he shall open the same; and acquaint the house, at their next sitting, with the contents thereof, if proper to be communicated to this house. Orders to be sent to postmaster-general.

## PARLIAMENTARY PAPERS.

95.—[14th August, 1896.] If, during the existence of a parliament, papers are commanded to be presented to this house by His Majesty at any time, the delivery of such papers to the librarian of the House of Commons shall be deemed to be for all purposes the presentation of them to this house. Presentation of command papers.

## SESSIONAL ORDERS.

## ELECTIONS.

Ordered, That all members who are returned for two or more places in any part of the United Kingdom do make their election for which of the places they will serve, within one week after it shall appear that there is no question upon the return for that place; and if anything shall come in question touching the return or election of any member, he is to withdraw during the time the matter is in debate; and that all members returned upon double returns do withdraw till their returns are determined.

*Resolved*, That no peer of the realm, except such peers of Ireland as shall for the time being be actually elected, and shall not have declined to serve, for any county, city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in Parliament.

*Resolved*, That if it shall appear that any person hath been elected or returned a member of this house, or endeavoured so to be, by bribery, or any other corrupt practices, this house will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices.

## WITNESSES.

*Resolved*, That if it shall appear that any person hath been tampering with any witness, in respect of his evidence to be given to this house, or any committee thereof, or directly or indirectly hath endeavoured to deter or hinder any person from appearing or giving evidence, the same is declared to be a high crime and misdemeanour; and this house will proceed with the utmost severity against such offender.

*Resolved*, That if it shall appear that any person hath given false evidence in any case before this house, or any committee thereof, this house will proceed with the utmost severity against such offender.

## METROPOLITAN POLICE.

*Ordered*, That the commissioners of the police of the metropolis do take care that, during the session of Parliament, the passages through the streets leading to this house be kept free and open, and that no obstruction be permitted to hinder the passage of members to and from this house, and that no disorder be allowed in Westminster Hall, or in the passages leading to this house, during the sitting of Parliament, and that there be no annoyance therein or thereabouts; and that the Serjeant-at-arms attending this house do communicate this order to the commissioners aforesaid.

\* References supplied by the late Mr. James B. Bell.

16th Jan. 1805, 60  
C. J. 6;  
founded  
on order  
15th Dec. 1699, 13  
ib. 64.  
13th Feb. 1833, 88  
C. J. 39;  
founded  
on order  
13th Feb. 1700, 13  
ib. 397.  
6th Aug. 1714, 18  
C. J. 5;  
founded  
on order  
20th Feb. 1700, 13  
ib. 350.  
24th Aug. 1841, 96  
C. J. 466;  
founded  
on orders,  
29th Sept. 1646, and  
1st June, 1647, 4  
ib. 677;  
5 ib. 194,  
directing  
that "the  
guard" do  
protect  
the house,  
and an  
order to  
the con-  
stables,  
13th Jan. 1693,  
11 ib. 59.\*

## II.

## INSTRUCTIONS.

## CLASSIFIED EXAMPLES ILLUSTRATING PROCEDURE ON INSTRUCTIONS.

- Class 1.—Cases when an instruction was necessary to empower a committee on a bill to consider the amendments proposed by the instruction.
- Class 2.—Cases when instructions were ruled out of order, because the committee possessed the power which the instruction would confer.
- Class 3.—Cases when instructions were ruled out of order, because they were foreign to the subject-matter of the bill.
- Class 4.—Cases of instructions to extend the scope of a bill throughout the United Kingdom.

Addresses from the chair regarding the scope and nature of instructions, and also upon an undue resort to the right of moving instructions.

Class 1.—Cases when an instruction was necessary to empower a committee on a bill to consider the amendments proposed by the instruction :—

- (1) Markets and Fairs (Ireland) Bill, 1862.—To insert provisions for the equalization of weights and measures in all mercantile transactions throughout Ireland.<sup>1</sup>
- (2) County Votes Registration Bill, 1865.—To insert provisions relating to the duties and powers of revising barristers in cities and boroughs.<sup>2</sup>
- (3) Union Chargeability Bill.—To insert in this bill, which regulated the charges upon parishes within existing unions, provisions to facilitate, in certain cases, the alteration of the limits of existing unions.<sup>3</sup>
- (4) Representation of the People Bills, 1860 and 1866.—To insert provisions for restraining bribery and corruption at elections.<sup>4</sup>
- (5) Representation of the People Bill, 1867.—To insert provisions affecting the law of rating, the incidence of taxation, and the rights of owners and occupiers, pursuant to general and local Acts, irrespectively of the franchise.<sup>5</sup>
- (6) Sale of Intoxicating Liquors on Sunday (Ireland) Bill, 1877.—To insert provisions for the supervision by the police of refreshment-houses, on all days of the week, and for increased penalties on the unlawful sale of liquor.<sup>6</sup>
- (7) Land Purchase (Ireland) Bill, 1888.—To insert in the bill—which was restricted to the creation of an advance of 5,000,000*l.* for the purposes of Lord Ashbourne's Act, 1885—clauses dealing with arrears due from tenants

<sup>1</sup> 165 H. D. 3 s. 1876.

<sup>2</sup> 120 C. J. 254.

<sup>3</sup> 120 C. J. 258.

<sup>4</sup> 158 H. D. 3 s. 1966; 183 *ib.* 1320.

<sup>5</sup> 186 H. D. 3 s. 1270.

<sup>6</sup> 132 C. J. 288.

- who sought to avail themselves of the power given by the bill to purchase their holdings.<sup>1</sup>
- (8) Land Purchase (Ireland) Bill, 1888.—To insert provisions to enable the land commission to permit a tenant to combine with the purchase of his holding the purchase of adjacent grass lands, and of lands not devoted to tillage.<sup>2</sup>
- (9) Local Government (Electors) Bill, 1888.—To insert provisions in the bill with a view to assimilate the qualification of electors of guardians of the poor, including the abolition of the plural vote, to the conditions prescribed in the bill with regard to electors of county authorities.<sup>3</sup>
- (10) Tithe Rent-Charge Recovery Bill, 1889.—To insert provisions for a gradual redemption of tithe rent-charge on an equitable basis; and for a readjustment of the method for taking the tithe rent-charge averages; and to review and revise the settlement made by the Tithe Commutation Act of 1836.<sup>4</sup>
- (11) Allotments Act, 1887, Amendment Bill, 1890.—To insert provisions creating, by popular election, local authorities in smaller areas than those of the sanitary authorities, and to confer upon them larger powers for acquiring and managing land for the purposes of allotments than those in force under the Allotments Act, 1887; and also to substitute parishes in vestry assembled, for those rural sanitary authorities that were the operative bodies prescribed by the bill.<sup>5</sup>
- (12) Local Government (England and Wales) Bill, 1888.—To insert provisions for the reform of parish vestries.<sup>6</sup>
- (13) Elementary Education Bill, 1891.—To insert provisions to raise the standard for partial and total exemption in schools receiving fee grants.<sup>7</sup>
- (14) Private Bill Procedure (Scotland) Bill, 1891.—To insert provisions for the simplification of the procedure, and the reduction of the cost of provisional orders.<sup>8</sup>
- (15) Local Government (England and Wales) Bill, 1893.—To insert provisions to enfranchise for the purposes of the bill all those women, whether married or single, who would be entitled to be on the Local Government register of electors, or on the Parliamentary register of electors if they were men.<sup>9</sup>
- (16) Established Church (Wales) Bills, 1895 and 1912.—To make provision for facilitating the redemption of the tithe rent-charge in Wales.<sup>10</sup>
- (17) Voluntary Schools Bill, 1897.—To insert clauses to make provision for ensuring adequate representation of local authorities or parents on the management of schools in receipt of the aid grant given by the bill.<sup>11</sup>
- (18) Workmen (Compensation for Accidents) Bill, 1897.—To insert provisions to secure compensation to workmen for injuries to health arising out of and in the course of their employment.<sup>12</sup>
- (19) Education (Scotland) Bill, 1897.—To make provision for the exemption

<sup>1</sup> 143 C. J. 482; 33 H. D. 3 s. 33.

<sup>2</sup> 331 H. D. 3 s. 34. 61.

<sup>3</sup> 143 C. J. 197.

<sup>4</sup> 144 C. J. 420.

<sup>5</sup> 145 C. J. 283.

<sup>6</sup> 143 C. J. 264, 326 H. D. 3 s. 1440.

<sup>7</sup> 146 C. J. 404, 354 H. D. 3 s. 1870.

<sup>8</sup> 352 H. D. 3 s. 154. 155.

<sup>9</sup> 148 C. J. 592.

<sup>10</sup> 33 Parl. Deb. 4 s. 540; 44 H. C. Deb. 5 s. 1829.

<sup>11</sup> 152 C. J. 83. See also Elementary Education Bill, 1891, 146 C. J. 400.

<sup>12</sup> 152 C. J. 249.

of voluntary schools from local rates and to insert clauses in the bill with a view to making provision for insuring adequate representation of local authorities or parents on the management of voluntary schools in receipt of the aid grant.<sup>1</sup>

Class 2.—Cases when instructions were unnecessary, because the committee possessed the power which the instructions would confer :—

- (1) Representation of the People Bill, 1884.—To insert provisions dealing with the registration of electors.<sup>2</sup>
- (2) Local Government (England and Wales) Bill, 1888.—To insert a provision transferring the duties discharged by the high sheriff, as returning officer at elections of county representatives, to the chairman of a county council; also provisions enabling a county council to appoint a standing committee to superintend the administration and financial business of the council, during the intervals between the sittings or sessions of a council; and provisions giving a county council compulsory powers for the erection of one gymnasium for every 100,000 inhabitants.<sup>3</sup>
- (3) Local Government (Scotland) Bill, 1889.—To insert clauses enabling county councils to purchase land by agreement, or under compulsory powers, for the purposes of public utility. Speaker's ruling (private).
- (4) Purchase of Land (Ireland) Bill, 1890.—To insert clauses creating local authorities in Ireland, whose assent should be necessary to the imposition of any liability upon local revenues for the purposes of the bill.<sup>4</sup>
- (5) Western Australian Constitution Bill, 1890.—To insert clauses enacting that the bill should not come into operation until the Act recited in the schedule to the bill, which conferred a constitution upon the colony, was amended by assimilating the franchise, and the qualifications of members of the legislative council and assembly of Western Australia, to those of other Australian colonies. Speaker's ruling (private).
- (6) Local Taxation (Customs, &c.) Bill, 1890.—To insert clauses defining the principle upon which licences for the sale of liquor should be extinguished relatively to the population, the wishes, and the rateable value of each licensing district, and to fix a maximum value for renewable licences, which should be imperative upon the county councils. Speaker's ruling (private).
- (7) Established Church (Wales) Bill, 1895.—To enable a holder of an ecclesiastical office entitled to existing interest to be transferred to another office without forfeiting such interest, to provide for the application of the property of the Church of Wales to purposes directly connected with the religious welfare of, or to purposes of general advantage to, the people of Wales.<sup>5</sup>
- (8) Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Bill, 1896.—To provide that the Crofters Commission in fixing a fair rent for a holding shall not be entitled to take into consideration any relief afforded by the Act.<sup>6</sup>
- (9) Education Bill, 1896.—To insert provisions for abolishing cumulative voting at school board elections, for the separate treatment of London and

<sup>1</sup> 152 C. J. 374.

<sup>2</sup> 287 H. D. 3 s. 828.

<sup>3</sup> 326 H. D. 3 s. 1440.

<sup>4</sup> 345 H. D. 3 s. 346.

<sup>5</sup> 33 Parl. Deb. 4 s. 539.

<sup>6</sup> 43 Parl. Deb. 4 s. 1358.

- county boroughs and for the representation of voluntary schools upon the education authority under the bill.<sup>1</sup>
- (10) Voluntary Schools Bill, 1897.—To insert clauses to provide as a condition of receiving the aid grant that no teacher in a voluntary school shall be required to perform any non-educational duty.<sup>2</sup>
- (11) Marriage with a Deceased Wife's Sister Bill, 1902.—To limit the operation of the bill to such marriages of persons so related as shall take place after the bill becomes law.<sup>3</sup>
- (12) Education (England and Wales) Bill, 1906.—To provide that the education committees constituted under the Act of 1902 should consist in part or entirely of persons directly elected by the ratepayers, and that secular education only should be given during school hours in public elementary schools, to insert a definition of the particulars of the religious instruction to be given in schools when the local education authority authorizes the giving of such instruction, and to provide for the establishment of a central education authority for London and other areas.<sup>4</sup>
- (13) Finance Bill, 1909.—To insert clauses in the bill, in accordance with the provisions of the Act of Union, to allow Ireland the special exemptions and abatements provided for in that statute so as to ensure that her taxation shall not exceed her relative taxable capacity as compared with that of Great Britain.<sup>5</sup>

Class 3.—Cases of instructions ruled out of order, as being foreign to the subject-matter of the bill:—

- (1) Arms (Ireland) Continuance Bill, 1886.—To insert clauses dealing with the law relating to poor law guardians, labourers' dwellings, and the franchise in corporate towns in Ireland. Speaker's ruling (private).
- (2) East India (Purchase and Construction of Railways) Bill, 1887.—To insert provisions imposing harbour dues and charges on her Majesty's ships conveying material for government railways in India. Speaker's ruling (private).
- (3) Criminal Law Amendment (Ireland) Bill, 1887.—To insert provisions to prevent the exaction of unfair and excessive rents. Speaker's ruling (private).
- (4) Criminal Evidence Bill, 1888.—To insert provisions conferring on prisoners tried by the courts of summary jurisdiction in Ireland a right to appeal, similar to the right possessed by the like class of prisoners in England. Speaker's ruling (private).
- (5) Local Government (England and Wales) Bill, 1888.—To insert clauses giving county councils power to appoint and remove justices of the peace, and dealing with the property qualification of the justices, and to create fishery boards with power to acquire harbours, levy rates, and generally to promote fishing industry.<sup>6</sup>
- (6) Land Law (Ireland) Bill, 1888.—To insert in the bill which related solely to the tenure of land, and did not touch the charges thereon, provisions dealing with family charges upon land. Speaker's ruling (private).

<sup>1</sup> 41 Parl. Deb. 4 s. 365.

<sup>2</sup> 46 Parl. Deb. 4 s. 1154.

<sup>3</sup> 102 Parl. Deb. 4 s. 1112.

<sup>4</sup> 157 Parl. Deb. 4 s. 960. 991.

<sup>5</sup> 6 H. C. Deb. 5 s. 1374.

<sup>6</sup> 326 H. D. 3 s. 1440.



- (7) Land Purchase (Ireland) Bill, 1888.—To insert in the bill—of which the sole object was an advance of money, for the purposes prescribed by the Purchase of Land (Ireland) Act, 1885—clauses dealing with arrears of rent due, not from tenants who sought to avail themselves of the rights given by the bill, but from the Irish tenantry in general, and clauses excepting minerals, mining rights, and foreshores from sales under the Purchase of Land (Ireland) Act, 1885, and vesting that class of property in the Crown.<sup>1</sup>
- (8) Local Government (Scotland) Bill, 1889.—To insert provisions empowering sea-coast towns in Scotland to raise loans for harbour purposes under the Harbour and Passing Tolls Act, 1881, and to create local councils for that purpose. • Speaker's ruling (private).
- (9) Tithe Rent-Charge Recovery Bills, 1889 and 1890.—To insert clauses exempting persons from payment of tithe who objected to its application to the Church of England<sup>2</sup>; to apply tithe rent-charge recoverable in Wales to purposes generally acceptable to the Welsh people, or to public education in Wales; to insert provisions prescribing, that when a receiver had been appointed under the bill, the owner, if so desired by the occupier, should be subject to the provisions of the Agricultural Holdings Act, and responsible for the proper repair of the farm buildings, &c.; and also provisions dealing with the status of the ecclesiastical commissioners.<sup>3</sup>
- (10) Private Bill Procedure (Scotland) Bill, 1890–1.—To insert clauses authorizing the commissioners under the bill, or the Secretary for Scotland upon their report, to grant to local authorities provisional orders for the purposes for which powers are conferred on local authorities by private Acts; and to insert clauses to substitute a joint committee of both houses of Parliament for the commission to be appointed by the bill; and to enable the joint committee to dispense with a local inquiry.<sup>4</sup>
- (11) Local Government (England and Wales) Bill, 1893.—To provide for the reform of the method of election of aldermen in municipal corporations.<sup>5</sup>
- (12) Railway and Canal Traffic Bill, 1894.—To insert clauses in the bill—which was to regulate charges—for the reforming of the Railway and Canal Commission and ensuring the presence upon it of a person experienced in trading. • Speaker's ruling (private).
- (13) Fatal Accidents Inquiry (Scotland) Bill, 1895.—To amend the bill so as to include all cases of sudden death in Scotland.<sup>6</sup>
- (14) Established Church (Wales) Bill, 1895.—To insert a clause to provide for the taking of a quinquennial religious census in Wales, or to deal with the endowments of chapels in Wales exempted from rates as places of public religious worship.<sup>7</sup>
- (15) Naval Works Bill, 1895.—To extend the powers for the acquisition of land given by the bill—which placed £1,000,000 at the disposal of the Admiralty for certain specific purposes for the use of the navy—to the acquisition of land for housing workpeople employed on the works contemplated by the bill, to specify a time for the completion of the works mentioned in the schedule of the bill (part of the cost of which only was taken

<sup>1</sup> 331 H. D. 3 s. 23.<sup>2</sup> 339 H. D. 3 s. 1082.<sup>3</sup> 345 H. D. 3 s. 136. Notices of Motions, scss. 4800, p. 1675.<sup>4</sup> 352 H. D. 3 s. 154, 155.<sup>5</sup> 18 Parl. Deb. 4 s. 1089.<sup>6</sup> 34 Parl. Deb. 4 s. 774.<sup>7</sup> 33 Parl. Deb. 4 s. 540.

- by the bill) and to compel the Treasury to apply annually to Parliament until all the money necessary to complete all the works contained in the schedule had been sanctioned.<sup>1</sup>
- (16) Agricultural Rates, Congested Districts and Burgh Land Tax Relief (Scotland) Bill, 1896.—To introduce provisions for the relief of occupiers of lands and heritages other than agricultural, and to apply the funds allotted by the bill to purposes of higher education or agricultural experiment and research.<sup>2</sup>
- (17) Land Law (Ireland) Bill, 1896.—To insert provisions in the bill—which dealt with the relations of landlord and tenant—empowering the Land Commission to make advances to landlords for the redemption of incumbrances on their estates.<sup>3</sup>
- (18) Agricultural Land Rating Bill, 1896.—To insert provisions to transfer to county councils in Wales the grant, in relief of rates proposed by the bill.<sup>4</sup>
- (19) Voluntary Schools Bill, 1897.—To insert clauses in the bill—which was one, to afford relief to voluntary schools—to place schoolrooms in schools receiving the aid grant at the disposal of the inhabitants of the district for the purpose of public meetings, to provide that in districts in which there was no board school religious tests should not be applied to the appointment of pupil teachers, to enable the managers of voluntary schools to contract with school boards for the supply of education and to insert clauses for the creation of elective authorities in districts in which there were no board schools.<sup>5</sup>
- (20) Workmen (Compensation for Accidents) Bill, 1897.—To insert clauses providing that the State or the owners of mine royalties should contribute to the compensation established by the bill, to establish a system of State insurance, to extend the law of employer's liability to, and abolish the doctrine of common employment in, trades not affected by the bill, and to extend the bill to foreign shipowners.<sup>6</sup>
- (21) London Government Bill, 1899.—To insert clauses providing for the transfer to the new local authorities, created by the bill, of the powers and duties of the guardians of the poor, for dealing with local taxation or the taxation of ground values, and for transferring to the London County Council powers relating to the public health exercised by other authorities.<sup>7</sup>
- (22) Tithe Rent Charge (Rates) Bill, 1899.—To extend the provisions of the bill by which partial relief from rates was given to the tithe rent-charge of beneficed clergymen to rates assessed in respect of tithe rent-charge payable to schools and colleges, or to provide for the repayment by the ecclesiastical commissioners out of their ecclesiastical property of the sums paid in relief of rates under the bill, or for the payment of such sums to the local taxation account.<sup>8</sup>
- (23) Demise of the Crown Bill, 1901.—To insert provisions in the bill, the object of which was to prevent the demise of the Crown from having any effect on the tenure of office of servants of the Crown, to secure that

<sup>1</sup> 33 Parl. Deb. 4 s. 400.<sup>2</sup> 43 Parl. Deb. 4 s. 1358.<sup>3</sup> 41 Parl. Deb. 4 s. 978.<sup>4</sup> 40 Parl. Deb. 4 s. 1267.<sup>5</sup> 46 Parl. Deb. 4 s. 1154.<sup>6</sup> 49 Parl. Deb. 4 s. 1153.<sup>7</sup> 70 Parl. Deb. 4 s. 447.<sup>8</sup> 74 Parl. Deb. 4 s. 325.

acceptance of office should not vacate the seat of a member of the House of Commons, or to provide that the demise of the Crown between a dissolution and the meeting of a new parliament should not render void or affect elections or returns.<sup>1</sup>

(24) *Marriage with a Deceased Wife's Sister Bill, 1902.*—To extend the bill to the legalisation of other prohibited marriages and to marriages of persons related in affinity which are lawful in Canada and Australia.<sup>2</sup>

(25) *London Water (re-committed) Bill, 1902.*—To provide for the purchase of the undertakings, which under the bill were to be purchased and managed by the Water Board thereby constituted, by an existing authority pending the further consideration of the ultimate authority by whom they were to be held and managed.<sup>3</sup>

(26) *Education (Provision of Meals) Bill, 1906.*—To make provision for children who are unable on account of other causes than the want of food to profit by the education offered.<sup>4</sup>

(27) *Parliament Bill, 1911.*—To insert provisions for altering the constitution of either house, for the redistribution of seats, to deal with the composition of the House of Commons or to remove the disabilities of peers to be elected to the House of Commons or to vote at elections therefor.<sup>5</sup>

(28) *Housing Bill, 1914.*—To insert clauses in the bill, which was to give power to the Board of Agriculture and Fisheries with respect to housing in agricultural districts, and to make provision for the housing of persons employed by government departments where sufficient accommodation was not available, enabling the Local Government Board to deal with the housing difficulty in the towns and industrial districts.<sup>6</sup>

• Class 4.—In the following cases an instruction was required to extend the operative effect of a bill beyond that part of the United Kingdom to which the bill as introduced was confined :—

(1) *Sunday Trading (Metropolis) Bill, 1855.*—To insert a clause applying the provisions of the bill to the United Kingdom. Speaker's ruling (private).

(2) *Supreme Court of Judicature Bill, 1873.*—To insert in this bill which dealt with the constitution of a supreme court, and the better administration of justice in England, clauses which provided for the hearing of appeals from Scotland and Ireland.

(3) *Poor Law Amendment Bill, 1879.*—To insert in this bill, which was confined to the English law, provisions which amended and repealed the Scotch poor law.<sup>7</sup>

(4) *Game Laws Amendment (Scotland) Bill, 1879.*—To insert clauses which extended the operation of the bill to England.<sup>8</sup>

(5) *Crofters (Scotland) Bill, 1886.*—To extend the scope of the bill, which was limited to the highlands and islands of Scotland, to other parts of Scotland.<sup>9</sup>

(6) *Agricultural Land Rating Bill, 1896.*—To extend the operation of the bill to Ireland.<sup>10</sup>

<sup>1</sup> 93 Parl. Deb. 4 s. 1259.

<sup>2</sup> 102 Parl. Deb. 4 s. 1111, see also 93 ib. 320.

<sup>3</sup> 111 Parl. Deb. 4 s. 9.

<sup>4</sup> 166 Parl. Deb. 4 s. 1273.

<sup>5</sup> 23 H. C. Deb. 5 s. 1815. 1849.

<sup>6</sup> Notices of Motions, sess. 1914, p. 3889, 65 H. C. Deb. 5 s. 1781.

<sup>7</sup> 244 H. D. 3 s. 1600.

<sup>8</sup> 249 H. D. 3 s. 175.

<sup>9</sup> 304 H. D. 3 s. 110. 117.

<sup>10</sup> 151 C. J. 217.

- (7) County Councils (Bills in Parliament) Bill, 1903.—To extend the bill to Scotland.<sup>1</sup>
- (8) Trawling in Prohibited Areas (Prevention) Bill, 1909.—To extend to Ireland the provisions of the bill, the object of which was to prohibit the landing and selling in the United Kingdom of fish caught in prohibited areas of the sea adjoining Scotland.<sup>2</sup>

#### ADDRESSES FROM THE CHAIR REGARDING INSTRUCTIONS.

The following statement regarding procedure on instructions was made by the Speaker, in deference to an application made to him in the house:—

"I have naturally, within the last few weeks, given special attention to the subject, and if the right hon. gentleman and the house will permit me, I would like to state my views as explicitly as I can to the house. I have searched the precedents connected with instructions. The house will perhaps be best put in the possession of my views on the subject when I say that there is a very vast and material difference between an instruction to the committee, and an amendment on the second reading of a bill, such as a resolution which traverses the principle of the bill. When a bill has been read a second time, the house has assented to the principle of the bill. In the last few years a standing order has been passed, stating that when the house is prepared to go into committee, the Speaker is to leave the chair without question put: but there is a reservation made with regard to instructions to the committee. It would be obvious to the house, that if an instruction moved on that occasion were to traverse the principle of the bill, or go so far outside the limits and scope and framework of the bill, so as to set up an alternative scheme, or a counter proposition to the bill, that would virtually be a second reading debate over again. It would be an amendment to the principle of the bill, and would therefore reduce to a minimum, and would nullify altogether, the provision which the house has passed in the standing order which states that, when the house is prepared to go into committee, I should leave the chair at once without any question put. There is nothing in the precedents, I believe, which go beyond an instruction of this nature—an instruction to amplify the machinery of the bill to carry out the general purpose and scope of the bill within the general framework and idea of the bill. There is no instruction, that I am aware of, certainly not since the alteration in the standing order, which could be construed into the traversing of the principle of the second reading of a bill."<sup>3</sup>

During session 1890, instructions to the number of seven, ten, and fifteen, were put down to three bills, several of the instructions standing in the name of

<sup>1</sup> 158 C. J. 119.

<sup>2</sup> 164 C. J. 221.

<sup>3</sup> 345 H. D. 3 s. 347. See also the Speaker's rulings on the series of instructions proposed to be moved on the Representation of the People Bill, 1860; 158 ib. 1951-1988; Local Government (England and Wales) Bill, 1888, 326 ib. 1440; Private Bill Procedure (Scotland) Bill, 1891, 352 ib. 154; Elementary

Education Bill, 1891, 354 ib. 1870; Government of Ireland Bill, 1893, 12 Parl. Deb. 4 s. 205. 345; Tithe Rent-Charge (Rates) Bill, 1899, 74 ib. 325; London Water (recommitted) Bill, 1902, 111 ib. 9; National Insurance Bill, 1911, 27 H. C. Deb. 5 s. 119; Government of Ireland Bill, 1912-13, 39 ib. 741; Special Register Bill, 1916, 86 ib. 1749.

the same member. An amendment of a closure nature to restrain the further proposal of instructions to one of these bills (see p. 314, n. 5) was proposed in consequence. The Speaker's attention having been called to the unusual form of this amendment, he made the following statement:—

"The house is indebted to the right hon. gentleman for having called attention to this matter. No doubt the amendment standing in the name of the right hon. gentleman, the president of the local government board, is not out of order. It resembles the motion familiar to the house, that the house do pass to the orders of the day, by which the house disembarrasses itself of matter which it does not wish to pass judgment on, and proceeds to its appointed business. The motion, I acknowledge, is *prima facie* to be regarded with some suspicion as a form of closure: but on the other hand, I must call the attention of the house to the fact that there are a great number of instructions on the paper, more than one, I think, being in the name of the same hon. member. This is the first session, I think, that this practice has been extensively adopted, and there are two other bills in regard to which notices of a still larger number of instructions have been given. In my opinion the house ought to take notice of this. The new rule that the Speaker should leave the chair without question being put, would obviously be somewhat modified, if not robbed altogether of force, if a great number of instructions are put down so as to prevent the Speaker from leaving the chair—instructions which, in the case before us, might occupy the house for several sittings; and if one hon. member is to be entitled to put down more than one instruction in his name, it gives him a greater right of speaking than he has on the second reading of the bill itself." <sup>1</sup>

<sup>1</sup> 344 H. D. 3 s. 19.

## III.

## EXAMPLES OF AMENDMENTS TO PROPOSED AMENDMENTS.

*For leaving out words of Proposed Amendments, such Amendments being to omit words from the Question.*

39 C. J.  
842, 17th  
Dec. 1783,  
East India  
affairs

A MOTION was made, and the question being proposed, "That it is necessary to the most essential interests of this kingdom; and peculiarly incumbent on this house, to pursue, with unremitting attention, the consideration of a suitable remedy for the abuses which have prevailed in the government of the British dominions in the East Indies; and that this house will consider, as an abettor of those abuses, and an enemy to his country, any person who shall presume to advise his Majesty to prevent, or in any manner interrupt, the discharge of this important duty;"

And an amendment being proposed to be made to the question, by leaving out the words, "and that this house will consider as an abettor of those abuses, and an enemy to his country, any person who shall presume to advise his Majesty to prevent, or in any manner interrupt, the discharge of this important duty;"

An amendment was proposed to be made to the said proposed amendment, by leaving out the words, "an abettor of those abuses, and."

And the question being put, "That the words, 'an abettor of those abuses, and,' stand part of the said first proposed amendment:"—it passed in the negative.

Then the question being put, "That the said amendment, so amended, 'and that this house will consider as an enemy to his country any person who shall presume to advise his Majesty to prevent, or in any manner interrupt, the discharge of this important duty,' stand part of the question;"—it was resolved in the affirmative.

Then the main question, so amended, being put—

Resolved, "That it is necessary to the most essential interests of this kingdom, and peculiarly incumbent on this house, to pursue, with unremitting attention, the consideration of a suitable remedy for the abuses which have prevailed in the government of the British dominions in the East Indies; and that this house will consider as an enemy to his country any person who shall presume to advise his Majesty to prevent, or in any manner interrupt, the discharge of this important duty."

123 C. J.  
159, 7th  
May, 1868,  
Established  
Church  
(Ireland).

MOTION MADE, and question proposed, "That when the *Anglican Church in Ireland* is disestablished and disendowed, it is right and necessary that the grant to *Maynooth* and the *Regium Donum* be discontinued; and that no part of the secularized funds of the *Anglican Church*, or any state funds whatever, be applied in any way, or under any form, to the endowment or furtherance of the *Roman Catholic religion in Ireland*, or to the establishment or maintenance of *Roman Catholic denominational schools or colleges*;"

Amendment proposed, to leave out from the first word "That" to the end of the proposed resolution, in order to add the words, "when legislative effect shall have been given to the first resolution respecting the Established Church of Ireland, it is right and necessary that the grant to *Maynooth* and the *Regium Donum* be discontinued."

Question put, "That the words proposed to be left out stand part of the proposed resolution;"—it passed in the negative.

Question proposed, "That the words, 'when legislative effect shall have been given to the first resolution respecting the Established Church of Ireland, it is right and necessary that the grant to *Maynooth* and the *Regium Donum* be discontinued,' be added, instead thereof."

Amendment proposed to the said proposed amendment, by adding, at the end thereof, the words, "due regard being had to all personal interests."

Question, "That those words be there added;"—put, and agreed to.

Amendment proposed to the said proposed amendment, as amended, by adding, at the end thereof, the words, "and that no part of the endowments of the Anglican Church be applied to the endowment of the institutions of other religious communions."

Question put, "That those words be there added;"—it passed in the negative.

Question, "That the words, 'when legislative effect shall have been given to the first resolution respecting the Established Church of Ireland, it is right and necessary that the grant to *Maynooth* and the *Regium Donum* be discontinued, due regard being had to all personal interests,' be added to the word 'That' in the original question;"—put, and agreed to.

Original question, as amended, "That when legislative effect shall have been given to the first resolution respecting the Established Church of Ireland, it is right and necessary that the grant to *Maynooth* and the *Regium Donum* be discontinued, due regard being had to all personal interests;"—put, and agreed to.

THE ORDER of the day being read for the committee of supply;

And a motion being made, and the question being proposed, "That Mr. Speaker do now leave the chair;"

134 C. J.  
136, 4th  
April,  
1879, East  
India (Im-  
port Duty  
on Cot-  
ton).

An amendment was proposed to be made to the question, by leaving out from the word "That" to the end of the question, in order to add the words, "the *Indian* import duty on cotton goods, being unjust alike to the *Indian* consumer and the *English* producer, ought to be abolished, and this house is of opinion that the expenditure incurred for the *Afghan* War affords no satisfactory reason for the postponement of the promised remission of this duty," instead thereof.

And the question being put, "That the words proposed to be left out stand part of the question;"—it passed in the negative.

And the question being proposed, "That the words, 'the *Indian* import duty on cotton goods, being unjust alike to the *Indian* consumer and the *English* producer, ought to be abolished, and this house is of opinion that the expenditure incurred for the *Afghan* War affords no satisfactory reason for the postponement of the promised remission of this duty,' be added, instead thereof;"

An amendment was proposed to be made to the said proposed amendment, by leaving out from the word "goods" to the end of the question, in order to add the words, "is a tax which ought ultimately to be abolished; but that, in view

of the present state of *Indian* finances, it is highly inexpedient to deal with the matter at the present moment," instead thereof.

And the question being put, "That the words, 'being unjust alike to the *Indian* consumer and the *English* producer, ought to be abolished, and this house,' stand part of the said proposed amendment;"—it was resolved, in the affirmative.

And the question being put, "That the words, 'is of opinion that the expenditure incurred for the *Afghan* War affords no satisfactory reason for the postponement of the promised remission of this duty,' stand part of the said proposed amendment;"—it passed in the negative.

Another amendment was proposed to be made to the said proposed amendment, by adding after the words, "this house," the words, "accepts the recent reduction in these duties as a step towards their total abolition, to which her Majesty's government are pledged."

And the question being put, "That those words be there added;"—it was resolved in the affirmative.

And the question being put, "That the words, 'the *Indian* import duty on cotton goods, being unjust alike to the *Indian* consumer and the *English* producer, ought to be abolished, and this house accepts the recent reduction in these duties as a step towards their total abolition, to which her Majesty's government are pledged,' be added to the word 'That' in the original question;"—it was resolved in the affirmative.

Then the main question, so amended, being put—

Resolved, "That the *Indian* import duty on cotton goods, being unjust alike to the *Indian* consumer and the *English* producer, ought to be abolished, and this house accepts the recent reduction in these duties as a step towards their total abolition, to which her Majesty's government are pledged."

140 C. J.  
71, 27th  
March,  
1885,  
Egypt  
and the  
Soudan.

THE ORDER of the day being read, for resuming the adjourned debate on the amendment which, upon the 23rd day of this instant February, was proposed to be made to the question, "That an humble address be presented to her Majesty, humbly representing to her Majesty that the course pursued by her Majesty's government, in respect to the affairs of *Egypt* and the *Soudan*, has involved a great sacrifice of valuable lives and a heavy expenditure without any beneficial result, and has rendered it imperatively necessary, in the interests of the *British* Empire and the *Egyptian* people, that her Majesty's government should distinctly recognize, and take decided measures to fulfil, the special responsibility, now incumbent on them to assure a good and stable government, to *Egypt* and to those portions of the *Soudan* which are necessary to its security;"

And which amendment was, to leave out from the first word "That" to the end of the question, in order to add the words, "this house, while refraining from expressing an opinion on the policy pursued by her Majesty's government in respect to the affairs of *Egypt* and the *Soudan*, regrets the decision of her Majesty's government to employ the forces of the Crown for the overthrow of the power of the *Mahdi*," instead thereof;

And the question being put, "That the words proposed to be left out stand part of the question;"—it passed in the negative.

And the question being proposed, "That the words, 'this house, while refraining from expressing an opinion on the policy pursued by her Majesty's government



in respect to the affairs of *Egypt* and the *Soudan*, regrets the decision of her Majesty's government to employ the forces of the Crown for the overthrow of the power of the *Mahdi*,' be added to the word 'That' in the main question ; "

An amendment was proposed to be made to the said proposed amendment, by leaving out from the word "this" to the end thereof, in order to add the words, "government has failed to indicate any policy in reference to *Egypt* and the *Soudan* which justifies the confidence of this house or the country."

And the question being put, "That the words proposed to be left out stand part of the said proposed amendment ;"—it passed in the negative.

And the question being put, "That the words, 'government has failed to indicate any policy in reference to *Egypt* and the *Soudan* which justifies the confidence of this house or the country,' be there added ;"—it passed in the negative.

The original question was thus left, reduced to the initial word "That" (see "questions mutilated by amendments," p. 260).

AN AMENDMENT WAS PROPOSED to be made to the Bill, in page 3, line 21, by inserting after the word "precedents," the words, "and so far as respects property without just compensation: Provided that nothing in this sub-section shall prevent the Irish Legislature from dealing with any public department, municipal corporation, or local authority, or with any corporation administering public funds, so far as concerns such funds:" and the question being proposed, "That those words be there inserted: "

148 C. J.  
517, 22nd  
Aug. 1893,  
Government of  
Ireland  
Bill.

An Amendment was proposed to be made to the said proposed amendment, by leaving out from the word "administering" to the end of the said proposed amendment, and adding the words, "for public purposes, taxes, rates, cess, dues, or tolls, so far as concerns the same: " and the question being put, "That the words proposed to be left out stand part of the proposed amendment,"—it passed in the negative.

And the question being proposed, "That the words, 'for public purposes, taxes, rates, cess, dues, or tolls, so far as concerns the same,' be added to the said proposed amendment: " an amendment was proposed to be made to the amendment to the said proposed amendment, by leaving out the words, "so far as concerns the same: " and the question being put, "That the words proposed to be left out stand part of the amendment to the said proposed amendment," it was resolved in the affirmative.

And the question being put, That the words "for public purposes, taxes, rates, cess, dues, or tolls, so far as concerns the same," be added after the word "administering" in the said proposed amendment: It was resolved in the affirmative.

And the Question being put, That the words "and so far as respects property without just compensation: Provided that nothing in this sub-section shall prevent the Irish Legislature from dealing with any public department, municipal corporation, or local authority, or with any corporation administering for public purposes, taxes, rates, cess, dues, or tolls, so far as concerns the same" be inserted after the word "precedents" in p. 3, l. 21: It was resolved in the affirmative.

## IV.

## PROCLAMATIONS FOR THE SUMMONS OF PARLIAMENT.

*Proclamation for assembling Parliament on a Day earlier than that to which it stood  
Prorogued.*

By the QUEEN.

## A PROCLAMATION.

VICTORIA, R.

WHEREAS our Parliament stands prorogued to Thursday the fourteenth day of December next ; and whereas, for divers weighty and urgent reasons, it seems to us expedient that our said Parliament shall assemble and be holden sooner than the said day : We do, by and with the advice of our Privy Council, hereby proclaim and give notice of our royal intention and pleasure that our said Parliament, notwithstanding the same now stands prorogued, as hereinbefore mentioned, to the said fourteenth day of December next, shall assemble and be holden for the despatch of divers urgent and important affairs, on Tuesday the twelfth day of December next ; and the Lords Spiritual and Temporal, and the Knights, Citizens, and Burgesses, and the Commissioners for Shires and Burghs of the House of Commons, are hereby required and commanded to give their attendance, accordingly, at Westminster, on the said twelfth day of December, one thousand eight hundred and fifty-four.

Given at our Court at Windsor, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-four, and in the eighteenth year of our reign.

GOD save the QUEEN.

*Proclamation for assembling Parliament for the Despatch of Business upon a Day  
already appointed for its Assembly.*

By the QUEEN.

A P R O C L A M A T I O N .

VICTORIA, R.

WHEREAS our Parliament stands prorogued to Thursday the seventeenth day of January next : We, by and with the advice of our Privy Council, hereby issue our Royal Proclamation, and publish and declare our royal will and pleasure, that the said Parliament shall, on the said Thursday the seventeenth day of January, one thousand eight hundred and seventy-eight, assemble and be holden for the despatch of divers urgent and important affairs ; and the Lords Spiritual and Temporal, and the Knights, Citizens, and Burgesses, and the Commissioners for Shires and Burghs of the House of Commons, are hereby required and commanded to give their attendance accordingly at Westminster on the said Thursday the seventeenth day of January, one thousand eight hundred and seventy-eight.

Given at our Court at Windsor, this twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and in the forty-first year of our reign.

GOD save the QUEEN.

## V.

FORMS OF CERTIFICATES TO AUTHORIZE THE SPEAKER TO ISSUE A WARRANT  
FOR A NEW WRIT DURING A RECESS.

*Schedule of 24 Geo. III. sess. 2, c. 26, and 21 & 22 Vict. c. 110.*

We whose names are underwritten, being two members of the House of Commons, do hereby certify that *M. P.*, late a member of the said house, serving as one of the knights of the shire for the county of [or as the case may be] died upon the            day of            ; or, is become a peer of Great Britain, and that a writ of summons hath been issued under the great seal of Great Britain to summon him to Parliament [as the case may be], or has accepted the office of [as the case may be], and has been gazetted thereto in the *Gazette*, dated the            day of            , and has thereby vacated his seat; and we give you this notice, to the intent that you may issue your warrant to the Clerk of the Crown, to make out a new writ for the election of a knight to serve in Parliament for the said county of [or as the case may be] in the room of the said *M.P.*

Given under our hands this            day of           

To the Speaker of the House of Commons.

*Note.*—That in case there shall be no Speaker of the House of Commons, or of his absence out of the realm, such certificate may be addressed to any one of the persons appointed according to the directions of the Act 24 Geo. III.

For the form of certificate in the case of the bankruptcy of a member, see Bankruptcy Rules, 1915, Form 202.

## VI.

## PROCEDURE ON LORDS' AMENDMENTS.

No. 267 of the Rules, Orders, &c., of the House of Commons, dated 4th June, 1891, is reproduced here as it affords such a clear and effective statement of the procedure of the house on Lords' amendments:—

"When a bill is returned from the Lords with amendments, the amendments are read and agreed to, or agreed to with amendments, or disagreed to, or the further consideration thereof put off for three or six months, or the bill ordered to be laid aside.

"On the consideration of a bill returned by the Lords, with amendments, no amendment can be proposed to a Lords' amendment, save an amendment strictly relevant thereto; nor can an amendment be moved to the bill, unless the amendment be relevant to or consequent upon either the acceptance or the rejection of a Lords' amendment.

"When this house has disagreed to a Lords' amendment, the Lords may return the bill with further amendments thereto, consequent upon the rejection of their amendment, or with amendments proposed as alternative to the amendments disagreed to by this house.

"When the Lords return the bill with a message that they insist on an amendment to which the house has disagreed, this house may either agree, with or without amendment, to the amendment to which it had previously disagreed, and make, if necessary, a consequential amendment to the bill; or may postpone the consideration of the Lords' amendments for six months; or discharge the order thereon, and withdraw the bill; or order the Lords' amendments to be laid aside."



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